LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 13 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

TERM, 1964.

No. 271

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS,

Petitioners,

vs.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

SEYMOUR MARGULIES,
Counsel for Petitioners,
921 Bergen Avenue,
Jersey City 6, New Jersey.

FELIX-RAMON NEALS,
Associate Counsel for Petitioners,
921 Bergen Avenue,
Jersey City 6, New Jersey.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark 5, N. J.—MArket 3-4994

TABLE OF CONTENTS.

	PAGE
Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey	1
Citations to Opinions Below	2
Jurisdiction	2
Questions Presented	3
Constitutions and Statutes Involved	4
Statement	4
Reasons for Granting the Writ	9
Conclusion	21
Appendix A—Statutes and Constitutional Provisions Involved.	
The Constitution of the United States, Article XIV Section 1	22
42 U. S. C. 1455(d)	22
New Jersey Constitution, Article 8, Sec. 3, Par. 1	22
R. S. 40:55-21.1	23
R. S. 40:55-21.4	24
R. S. 40:55-21.5	24
R. S. 40:55-21.6	25
R. S. 40:55-21.7	26
R. S. 40:55-21.8	26
R. S. 40:55-21.9	26

PAGE

R. S. 40:55-21.10 26

R. S. 55:14A-32 27

R. S. 55:14A-33 28

R. S. 55:14A-39.1 29

R. S. 55:14A-43 29

R. S. 55:14A-48 29

R. S. 55:14A-50 29

R. S. 55:14A-52 31

R. S. 55:14E-6 32

R. S. 55:14E-21 33

Appendix B—Opinions and Judgment below:

Order Dismissing Appeal 35

Order Denying Petition 36

Opinion of Appellate Division 37

Judgment 51

Letter Opinion 53

Resolution 57

Determination 58

Blight Statement 60

Cases Cited.

	PAGE
Bowker vs. *City of Worchester*, 136 N. E. 2d 208 (Mass. 1956)	12
Danforth vs. *United States*, 308 U. S. 271 (1939)	9
Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 (1937)	19
Penn. Coal Company v. *Mahon*, 260 U. S. 393, 43 S. Ct. 158, 67 L. ed. 322, 28 A. L. R. 1321 (1922)	18
Vitarelli vs. *Seatson*, 359 U. S. 535, 3 L. ed. 2d 1012, 79 S. Ct. 968 (1959)	16
Webster, et al. v. *City of Newark, et al.*, 41 N. J. 599, 198 A. 2d 445 (1964)	2
Wilson vs. *Long Branch*, 27 N. J. 360, 142 A. 2d 837 (1958), cert. den. 79 S. Ct. 113, 358 U. S. 873	7, 8, 9, 10

United States Constitution.

Art. XIV, Sec. 1	2, 3, 4

Federal Statutes.

22 U. S. C. 1257 (3)	2
42 U. S. C. 1401 *et seq.*	5
12 U. S. C. 1430 *et seq.*	5
12 U. S. C. 1701 *et seq.*	5

New Jersey Constitution.

Art. 8, Sec. 3, par. 1	4, 11

Revised Statutes of New Jersey.

R. S. 40:55-21.1 *et seq.*	4, 5, 7, 8, 9, 10, 12
R. S. 40:55-21.1	9
R. S. 40:55-21.4	4, 14

	PAGE
R. S. 40:55-21.5	4, 14
R. S. 40:55-21.6	4, 5, 6, 14
R. S. 40:55-21.7	4, 6, 14
R. S. 40:55-21.8	4, 14
R. S. 40:55-21.9	4
R. S. 40:55-21.10	4
R. S. 55:14A-1 *et seq.*	12
R. S. 55:14A-29	12
R. S. 55:14A-31 *et seq.*	8, 9
R. S. 55:14A-31	8, 9
R. S. 55:14A-32	4, 9, 13
R. S. 55:14A-33	4, 10, 12, 13
R. S. 55:14A-38	13
R. S. 55:14A-39.1	4, 8, 13, 20
R. S. 55:14A-43	4, 12
R. S. 55:14A-48	4, 13
R. S. 55:14A-50	4
R. S. 55:14A-52	4, 13
R. S. 55:14E-6	4, 13
R. S. 55:14E-21	4, 13

OTHER AUTHORITIES CITED.

Davis, Administrative Law and Government (1960), p. 141 15

Forkosch, Constitutional Law (1963), sec. 181, p. 177 16

IN THE

Supreme Court of the United States

TERM 1964.

No.

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS,

Petitioners,

vs.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

Petitioners, Ellen Webster, Clarence Webster, Mabel Lyons, Anna Frazier, Aaron Frazier, Stanley B. Winters and Helen Winters, pray that a writ of certiorari issue to review the final order of the Supreme Court of the State of New Jersey entered in the captioned case on April 13, 1964.

Citations to Opinions Below.

All opinions in the case sub judice are unreported.

The order of the Supreme Court of New Jersey, dismissing (on motion) the appeal of petitioners is printed in Appendix B, *infra*, p. 35. The order of the Supreme Court of New Jersey (entered March 9, 1964) denying plaintiffs' petition for certification (*Webster, et al.* v. *City of Newark, et al.*, 41 N. J. 599, 198 A. 2d 445 (1964)' is printed in Appendix B, *infra*, p. 36. The opinion of the Superior Court of New Jersey, Appellate Division (entered January 10, 1964) is printed in Appendix B, *infra*, p. 37. The judgment of the Superior Court of New Jersey, Law Division, Essex County (entered September 11, 1962) is printed in Appendix B, *infra*, p. 51, and the opinion letter of that court (dated August 3, 1962) is printed in Appendix B, *infra*, p. 53. The resolution of the City of Newark (dated November 28, 1961) is printed in Appendix B, *infra*, p. 57. The determination of the Central Planning Board of the City of Newark (dated September 13, 1961) is printed in Appendix B, *infra*, p. 58 and the "Blight Statement" in support thereof is printed in Appendix B, *infra*, p. 60.

Jurisdiction.

The judgment of the Superior Court of New Jersey, Appellate Division, was entered on January 10, 1964. A petition to the Supreme Court of New Jersey was denied on March 9, 1964. A motion to dismiss the appeal to the Supreme Court of New Jersey was granted on April 13, 1964. The jurisdiction of this Court is invoked under 22 U. S. C. 1257 (3) and the 14th Amendment of the United States Constitution.

Questions Presented.

1. Where a state statute both establishes a procedure for a blight declaration and requires the municipality to acquire the property so declared blighted, does the declaration of blight constitute a "deprivation" of property in the constitutional sense of Article XIV, Sec. 1 of the United States Constitution so as to require a trial type hearing?

2. Does constitutional procedural due process require a trial type hearing in a municipal declaration of blight proceeding which is a step in the acquisition of federal funds where (a) the Federal Housing and Home Act requires a hearing before federal funds are made available to the local agency, and (b) pursuant to the federal statute, state statutes require as a step in the declaration of blight a hearing at which evidence in support of or in objection of the blight declaration be received and considered; each determination to be supported by substantial evidence and, if so supported be binding and conclusive; each determination be submitted to the questioning body in the form of a report upon which final action must be taken by the questioning body within 30 days after the submission of the report?

3. Where an act authorizing housing authorities to clear blighted areas and acquire real property contains an express anti-discrimination clause and a blight proceeding is instituted which is encompassed by that statute but the proceeding purports to be brought pursuant to another identified but inapplicable statute which

does not contain an anti-discrimination clause, and which contains a different and inapplicable standard are affected property owners thereby denied equal protections of the law?

Constitutions and Statutes Involved.

The constitutional and statutory provisions involved are: Art. XIV, section 1 of the United States Constitution; 42 U. S. C. 1455 (d): Art. 8, section 3, par. 1 of the New Jersey Constitution; The Revised Statutes of New Jersey (R. S. 40:55-21.1, R. S. 40:55-21.4, R. S. 40:55-21.5, R. S. 40:55-21.6, R. S. 40:55-21.7, R. S. 40:55-21.8, R. S. 40:55-21.9, R. S. 40:55-21.10, R. S. 55:14A-32, R. S. 55:14A-33, R. S. 55:14A-39.1, R. S. 55:14A-43, R. S. 55:14A-48, R. S. 55:14A-50, R. S. 55:14A-52, R. S. 55:14E-6, R. S. 55:14E-21). They are printed in Appendix A, *infra*.

Statement.

Petitioners, property owners and taxpayers of the City of Newark, contest a blight declaration by that municipality. The declaration finds blighted a seventy-four block area bounded by Springfield Avenue on the North, Belmont Avenue on the East, Avon Avenue on the South and Bergen Street on the West. The area is primarily residential, having 6,356 dwelling units and over 3,000 structures.

By resolutions dated December 18, 1957, and amendments thereto dated respectively November 2, 1960, February 16, 1961, and June 7, 1961, the City Council of the City of Newark (Council) designated the area be appro-

priated for urban renewal as a light industrial area (Project N. J. R.-32). The resolution by its terms was made pursuant to Chapter 300, Laws of 1949 of New Jersey (R. S. 55:14A-31, et seq.). Title I of the Housing Act of 1949, as amended (42 U. S. C. sec. 1401, et seq.), and the Housing Act of 1954 (12 U. S. C. 12, sec. 1430, et seq., sec. 1701, et seq.) (Appendix, Appellate Division, Superior Court of New Jersey, pp. 10a, 12a, 15a). The Central Planning Board of the City of Newark (Board) caused notices to be sent to property owners located in the area. The notice stated that a hearing was to be held to determine if the area was blighted as defined in "Chapter 187 of the New Jersey Laws of 1949, as amended." (R. S. 40:55-21.1 et seq.) (Appendix, Appellate Division, Superior Court of New Jersey, p. 67a).

At the administrative hearing held June 29, 1961, plaintiffs, learning of certain evidence of the first time, requested an adjournment pursuant to R. S. 40:55-21.6 (Appendix A, *infra*, p. 25) and the right to examine such evidence. Plaintiffs were denied an adjournment and precluded from examining the evidence introduced by the Housing Authority of the City of Newark (Housing Authority). The evidence included the survey cards (of the conditions of houses in the area) upon which the Board reached a conclusion that the area was blighted (Appendix, Appellate Division, Superior Court of New Jersey, pp. 44a-46a).

By resolution of September 15, 1961 (Appendix B, *infra*, p. 58), the Board determined the area blighted in accordance with Chapter 187 of the Laws of 1949 (R. S. 40:55-21.1 et seq.). The resolution was submitted to the

Council on September 21, 1961 (Appendix, Appellate Division, Superior Court of New Jersey, p. 24a). The resolution was returned to the Board by the Council because the Board had sent written instructions to the Council along with the resolution (Appendix, Appellate Division, Superior Court of New Jersey, p. 53a). The original resolution (dated September 13, 1961) was sent back to the Council by the Board to be resubmitted without the written instructions. Final action adopting the resolution was taken by the Council on November 28, 1961 (Appendix B, *infra*, p. 57). The resolution of the Council determined the area blighted in accordance with Chapter 187 of the Laws of 1949.

A civil action in lieu of prerogative writ was commenced by plaintiffs on December 12, 1961 (Appendix, Appellate Division, Superior Court of New Jersey, p. 1a). Therein, plaintiffs moved for summary judgment on the grounds that (1) at the administrative hearing, plaintiffs were denied an adjournment and the right to examine evidence (R. S. 40:55-21.6) (Appendix A, *infra*, p. 25); (2) the Council did not act within thirty days after receipt of the Board's determination in accordance with the provisions of R. S. 40:55-21.7 (Appendix A, *infra*, p. 26); and (3) the Board did not proceed within applicable statutory authority (Appendix, Appellate Division, Superior Court of New Jersey, p. 36a). The trial court denied the motion, held that the denial to plaintiffs of the right to examine evidence was erroneous, and reserved the right to hear testimony and receive evidence of the plaintiffs at the time of review. The court also entered an order allowing plaintiffs to examine the evidence introduced by the Housing Authority at the administrative hearing. After examina-

tion of the evidence by plaintiffs, evidence was introduced at the time of review which showed inadequacies, errors, incorrect tabulations and the arbitrariness and unreasonableness of the methods used by the Housing Authority in its survey and survey information. The review court found that substantial evidence existed in the record to support the blight determination within the provisions of R. S. 40:55-21.1, et seq. (Appendix B, *infra*, p. 23).

An appeal was taken by plaintiffs to the Appellate Division of the Superior Court of New Jersey on October 25, 1962 (Appendix, Appellate Division, Superior Court of New Jersey, p. 66a). In their brief to the Appellate Division, Superior Court of New Jersey, plaintiffs raised the constitutional questions of due process of law and equal protection of the laws. In addition thereto, plaintiffs reserved the right to urge in the event of further appellate review that the administrative proceeding involved property rights and should be regarded as quasi-judicial and that the plaintiffs were deprived of their constitutional rights to due process, including the right to a full hearing, to cross examine witnesses, to present rebuttal proofs, to be represented, to require sworn proofs and to have requisite notice. Such reservations were therein advanced by virtue of the opinion in *Wilson* vs. *Long Branch*, 27 N. J. 360, 142 A. 2d 837 (1958), certiorari denied 79 Sup. Ct. 113, 358 U. S. 873, 3 L. E. 2d 104 (1958). The Appellate Division affirmed the decision of the review court. In its opinion (Appendix B, *infra*, p. 37), the Appellate Division held, among other things, that: the Law Division of the Superior Court considered all the evidence, found substantial evidence in the record, and made findings of facts; the

statutes involved (R. S. 40:55-21.1, et seq., and R. S. 55:14A-31, et seq.) (Appendix A, *infra*, pp. 23 and 27), have the same express conditions as to what constitutes blight; final action of the Council can be within thirty days of a resubmission of a blight determination; the challenge of plaintiffs that the blight determination was discriminatory and prohibited by R. S. 55:14A-39.1 was without merit and premature. The Appellate Division also held that the blight hearing was that of a legislative fact-finding agency rather than a quasi-judicial body, citing *Wilson* vs. *Long Branch, supra.*

An appeal and petition for certification were filed with the Supreme Court of New Jersey which raised the questions that: (1) the administrative and judicial determinations of blight were unconstitutional and (a) insufficient in law because they fail to satisfy or to make reference to the statutory standard prescribed in Title 55; and (b) insufficient in fact because plaintiffs were precluded from producing rebuttal proofs and neither at the administrative nor judicial level was any consideration given to the rebuttal proofs; and (c) unconstitutional because no reasonably specific fact findings were made to support the determination; (2) the declarations of blight were unconstitutional and violative of the due process provisions of the state and federal constitutions in that among other things, they constitute the taking of property without affording requisite hearing opportunities and in totality, deprive the property owners of even the statutory hearing right to which they are entitled; (3) the actions under review including the resolution, declarations, determinations and decisions, ultra vires, unauthorized in law, violative of statutory prerequisites and discriminatory.

Notice of Appeal and Petition for Writ of Certiorari (Appendix, Petition for Certification, Supreme Court of New Jersey, pp. 1a-4a) were filed on January 23, 1964. The Supreme Court of New Jersey denied plaintiffs' petition and dismissed plaintiffs' appeal on motion (Appendix A, *infra*, pp. 35 and 36).

Reasons for Granting the Writ.

1. The question whether municipal action in the blighting of property pursuant to a state statute is a deprivation of property within the constitutional sense is not permanently foreclosed by the decision in *Danforth* vs. *United States*, 308 U. S. 271 (1939), and *Wilson* vs. *Long Branch*, 27 N. J. 360, 142 A. 2d 837 (1958), cert. den. 79 S. Ct. 113, 358 U. S. 873.

While in *Danforth* it was held that a "taking" of property does not occur until compensation has been ascertained and paid (308 U. S. 284-5), the state procedure in that case was free from statutory direction and the final acquisition of land did not have to occur (308 U. S. 286). In the case sub judice, there is definite and detailed statutory direction to the administrative agency.

The difference between *Wilson* vs. *Long Branch*, *supra*, and the case sub judice is the difference between: (1) an attack upon the constitutionality of a statute and an attack upon administrative action; (2) the hearing requirement of R. S. 40:55-21.1 et seq. and the hearing requirement of R. S. 55:14A-31 et seq.; and (3) "blight" as defined in R. S. 40:55-21.1 and as defined in R. S. 55:14A-32 (Appendix A, *infra*, pp. 23 and 27).

In *Wilson* vs. *Long Branch*, *supra*, the constitutionality of R. S. 40:55-21.1 et seq. was sustained, and the hearing requirement of such statute was held not to involve due process. The hearing provision of Title 40 related to nothing more than the investigation of the matter of blight, and Title 40 involved nothing more than a matter of the investigation of blight. However, where a statute involves more than merely an investigation—where it involves agency action, the ratio descendi of *Wilson* vs. *Long Branch*, *supra*, is not applicable. Further, it is respectfully pointed out that *Wilson* did not involve a complaint that the minimal prerequisites of the Title 40 blight act had not been complied with in fact.

A principal issue involved sub judice is that on analysis of the hearing required by Title 55 (R. S. 55:14A-33) (Appendix A, *infra*, p. 28), it must be concluded that a trial type hearing involving due process is called for. The pending petition involves principally Title 55 and tangentially Title 40. This Court has never before been called upon directly to construe the effect upon the individual of a denial of the kind of statutory hearing required in R. S. 55:14A-33. That statute standing alone (even if the blight act in Title 40 were nonexistent, repealed or amended) calls for a hearing. It is only the mechanics of the hearing (set forth in R. S. 40:55-21.1 et seq.) that are incorporated by reference into R. S. 55:14A-33.

The difference between an attack upon the constitutionality of a statute and an attack upon administrative action is evident. Where the attack is directed toward the statute, the Court is called upon to weigh the interests of the individual on the one hand and those of society on the

other. In the balance, the Court may find that the interests of society justify the infringement of the interests of the individual where the protection afforded by the questioned statute are complied with in fact. Where the agency proceeds ultra vires the statute and affects the individual, the Court may find in weighing the respective interests of the individual and society that the agency was not justified, particularly where procedural due process is involved. The individual should not be subjected to ultra vires administrative action because to so affect or burden the individual is a denial of due process.

While the blight act of Title 40 involves the blighting of property under the police power of the State for the usual purposes and may not involve a due process taking, such is not the case with respect to the blight act of Title 55 (R. S. 55:14A-31 et seq.).

Title 55 is not the usual blight act. It is, in essence, a step in the taking of property. The New Jersey Constitution 1947, Art. 8, sec. 3, par. 1, provides:

> "The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken, or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for those purposes and uses, or for any of them, may be exempted from taxation, in whole, or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law."

The Federal Housing Acts which allow federal assistance to local urban renewal and redevelopment programs provide, among other things, that contracts for loans or capital grants shall require (42 U. S. C. 1455(d)):

> "Acquisition of land; public hearings. No land for any project to be assisted under this sub-chapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing."

To obtain federal assistance, the requirements of the federal statute must be satisfied. *Bowker* vs. *City of Worchester*, 136 N. E. 2d 208 (Mass. 1956).

Pursuant to the New Jersey Constitution and in effort to be eligible for federal assistance in urban renewal and redevelopment programs, New Jersey enacted R. S. 55:14A-1 et seq. R. S. 55:14A-33 requires a hearing upon notice. The procedure for such hearing is found in R. S. 40:55-21.1 et seq. The public hearing requirement of R. S. 55:14A-33 is the only provision for a public hearing before the actual taking of property. Condemnation proceedings do not involve a public hearing.

Other powers conferred upon local housing authorities by Title 55 include, among other things, the following: R. S. 55:14A-29 permits local housing authorities to make contracts with the federal government and, in event of default in such contracts, to convey to the federal government the particular project involved. R. S. 55:14A-43 (Appendix A, *infra*, p. 29) also permits local housing authorities to seek and accept federal assistance and to convey to the federal government the redevelopment project

involved in case of a default in a contract between a local housing authority and the federal government. R. S. 55:14A-38 and R. S. 55:14A-52 (Appendix A, *infra*, p. 31) give the local housing authorities the power of eminent domain. R. S. 55:14A-39.1 (Appendix A, *infra*, p. 29) provides that for all purposes of the act discrimination against any person because of race, color, creed or national ancestry is prohibited (this is in conformity with both state and federal laws against discrimination where governmentally assisted urban renewal or redevelopment programs are involved). Under the Urban Redevelopment Law (R. S. 55:14E-6 et seq.) (Appendix A, *infra*, p. 32) which governs contracts between a municipality and a developer in an urban renewal project, a municipality is required to acquire the land involved in an existing contract between the municipality and the developer. R. S. 55:14A-48 (Appendix A, *infra*, p. 29) makes the provisions of Title 55 controlling over all inconsistent provisions of any other state law. R. S. 55:14A-32 and R. S. 55:14E-21 (The Urban Redevelopment Law) (Appendix A, *infra*, p. 27 and 33) both define a blighted area in identical language:

> "The term 'blighted area' is defined to be that portion of a municipality which by reason of, or because of, any of the conditions hereinafter enumerated as found and determined as provided by law to be a social or economic liability to such municipality: • • •"

In considering the procedural hearing prerequisites of Title 40, incorporated by reference into R. S. 55:14A-33, we direct the Court's attention to the fact that those prerequisites parallel the incidence of the normal due process kind of judicial hearing. R. S. 40:55-21.4 (Appendix A,

infra, p. 24) provides for a hearing upon notice which sets forth the appointed time, place, and purpose thereof. R. S. 40:55-21.5 (Appendix A, *infra*, p. 24) requires two different kinds of notices which must be given with respect to the hearing. R. S. 40:55-21.6 (Appendix A, *infra*, p. 25) provides that: (1) all evidence must be considered, (2) a determination of blight must be supported by substantial evidence, and (3) notice of the determination must be given to all who have filed written objection thereto. R. S. 40:55-21.7 (Appendix A, *infra*, p. 26) requires that the determination of the local planning board be submitted to the governing body in the form of a report. R. S. 40:55-21.8 (Appendix A, *infra*, p. 26) sets forth the procedure for review. The aforementioned elements governing the hearing are those of a full hearing.

A complaint in the case at bar is that the sovereign (the administrative agency) has by its act in depriving the individuals of their statutory protections thereby affected them without procedural due process. The importance of procedural due process cannot be overstressed. It is the essence of justice:

> "Thoughtful judges have often said that it is. For instance Mr. Justice Douglas: 'It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule of law and rule by whim and caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law.' Joint Anti-Fascist Refugee Committee *v.* McGrath, 341 U. S. 123, 179, 71 S. Ct. 624, 652, 95 L. Ed. 817 (1951). Mr. Justice Jackson: 'Procedural fairness and regularity are of the indispensable essence of liberty.'

> Shaughnessy *v.* United States et rel. Mezei, 345 U. S. 206, 224, 73 S. Ct. 625, 635, 97 L. Ed. 956 (1953). Mr. Justice Frankfurter: 'The history of liberty has largely been the history of procedural safeguards.' McNabb *v.* United States, 318 U. S. 332, 347, 63 S. Ct. 608, 616, 87 L. Ed. 819 (1943)." *Davis, Administrative Law and Government* (1960), p. 141.

The proposition must be recognized that some types of administrative unfairness may be constitutionally forbidden even when attached to "legislative facts." A trial type hearing is required for disputes of adjudicative facts whether the process of the administrative agency is termed legislative or judicial. The constitutional requirements of procedural due process is applicable to any one or more aspects of administrative proceedings It is the quality of the act rather than the character of the agency exercising the authority which is determinative of the nature of the power and the need for procedural due process.

Although it is not the entirety of the administrative process to which due process hearing requirements attach, the entire process must be examined. For even in its investigations, an administrative agency may so change into a quasi-judicial proceeding as to have constitutional rights apply. For example, a basis:

> "• • • upon which the constitutional requirement of procedural due process is applied (where) • • • the administrative agency • • • exercises this power of fact-determination and whose findings of fact are made binding upon the judiciary if and when they review such agency proceedings. For if the judiciary cannot make its own fact determinations, or substitute its own findings of fact, and is thus bound

> by those of the agency, then this doctrine of administrative 'finality of fact' partakes of the judicial power; and, therefore, to this extent, a 'taking' occurs under the constitutional Due Process Clause so that in the agency proceedings where such a finding of fact becomes binding upon the judiciary, procedural due process must be given. In other words, in a constitutional field, procedural due process is required of an agency where it engages in a judicial proceeding from and upon which findings of fact are made which are binding upon the courts." *Forkosch, Constitutional Law* (1963), sec. 181, p. 177.

Another basis upon which procedural due process is applied to an administrative agency termed legislative is where the legislative proceeding has special attributes under an applicable statute which carries with it fundamental procedural requirements. While the general rule is that legislative action may not require any hearing at all, administrative action:

> "• • • based on a define procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. See Service *v.* Dulles, 354 U. S. 363, 1 L. ed. 2d 1403, 77 S. Ct. 1152. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

Vitarelli vs. *Seatson*, 359 U. S. 535, 3 L. ed. 2d 1012, 79 S. Ct. 968 (1959), separate opinion of Mr. Justice Frankfurter with whom Mr. Justice Clark, Mr. Justice Whittaker and Mr. Justice Steward join concurring in part and dissenting in part (359 U. S. 546-7).

With respect to the application of the foregoing to the case sub judice, we note the following: (1) The blight act of Title 55, as heretofore analyzed, speaks of contract rights, requires a taking of property by a municipality under certain conditions, calls for a hearing upon notice and was enacted pursuant to the New Jersey Constitution which in itself refers to a taking of property, and pursuant to the federal statute requiring that all contracts providing for federal assistance contain a provision for a public hearing on notice before the taking of property by a municipality. The hearing procedure incorporated by Title 55 is detailed with respect to notice, the hearing of all evidence, and a record which must contain substantial evidence to support a determination. The substantial evidence rule is applicable upon review. Unquestionably the proceeding under Title 55 has special attributes under a statute containing fundamental procedural requirements. Even in its investigations, an administrative agency proceeding under the blight act of Title 55 conducts a quasi-judicial proceeding so as to have constitutional rights apply, i.e., its findings of fact are binding upon the judiciary where reviewed, and the judiciary is bound by the substantial evidence rule. Consequently, a full hearing is not afforded at the time of review. The legislative hearing involving Title 55 (a step in the taking of property) must be the kind of hearing governed by procedural due process. (2) The legislature has established protections which it deems requisite for the protection of individuals who are to be affected by the blight act of Title 55, and the Court should not establish a lesser standard. The branches of government are coordinate and coequal, subject only to the case developed concept of judicial supremacy. Legislative sensibility to

due process requirements is evidenced by the statutory standard. That standard should be controlling where it is reasonable and not less than the constitutional prerequisites.

The relationship between the concept of due process and the requirement of reasonable means is recognized in *Penn. Coal Company* v. *Mahon*, 260 U. S. 393, 43 S. Ct. 158, 67 L. ed. 322, 28 A. L. R. 1321 (1922). Mr. Justice Holmes, speaking for the Court, stated:

> "The protection of private property in the Fifth amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the Fourteenth Amendment. Hairston *v.* Danville & Western Ry. Co., 208 U. S. 598, 605. When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States.
>
> "The general rule at least is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. It may be doubted how far exceptional cases, like the blowing up of a house to stop a conflagration, go—and if they go beyond the general rule, whether they do not stand as much upon tradition as upon principle. Bowditch *v.* Boston, 101 U. S. 16. In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders. Spade *v.* Lynn & Boston R. R. Co., 172 Mass. 488, 489. We are in danger of forgetting

> that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. As we already have said this is a question of degree—and therefore cannot be disposed of by general propositions. But we regard this as going beyond any of the cases decided by this Court."

The statutory directions in the instant case go beyond those involved in cases decided by this Court.

In addition to the foregoing, even where something less than a trial type of hearing may be required by due process on disputed legislative facts, information secretly collected and not disclosed at the time of hearing is a denial of due process. That is essentially what was held in *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U. S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 (1937). There the Court held that the parties concerned were entitled to know and to have a chance to meet the facts used by the administrative agency. The Court further held that the proper means of meeting the facts may well have been something less than a trial type hearing. In the case sub judice, the local planning board's determination was based on evidence which the plaintiffs, at the time of the public hearing, were precluded from examining. While the review court permitted plaintiffs to later examine the evidence of the Housing Authority and present rebuttal evidence before the review court, the court was bound by the "substantial evidence" rule and based its decision on such (Appendix B, *infra*, p. 56). The decisional agency never heard or considered the evidence of plaintiffs. Whether such evidence would or would not have caused a different or modi-

fied decision by the agency is left to conjecture. However, the least to which plaintiffs were entitled was to be heard and have the opportunity to present rebuttal evidence before the administrative agency who was the decision-making body.

2. To apply the Title 40 definition of blight and hearing requirement to a Title 55 blight proceeding raises (besides due process questions) the constitutional issue of equal protection of law. Title 55 contains an express anti-discrimination clause (R. S. 55:14A-39.1) (Appendix A, *infra*, p. 29). The Title 40 blight act is used for purposes other than to procure federal assistance for urban renewal or redevelopment programs. The basic finding of a blight determination under Title 55 is that the subject property be a social or economic liability to the municipality. Such a finding is not necessary under a Title 40 blight determination. The anti-discrimination provisions of Title 55 are not part of the provisions of Title 40. A municipality is not required to acquire property after making a blight determination under Title 40 as it is under Title 55. By enacting R. S. 55:14A-31 et seq., the legislature enacted reasonable means designated towards certain ends. Since Title 55 is the statute under which municipalities are permitted to do those things necessary to acquire federal aid, and since Title 55 contains prerequisites not provided for in Title 40, plaintiffs were denied, not only the protection of the provisions of Title 55, as they apply to the administrative proceedings which have already occurred, but also the provisions of Title 55 as they apply to subsequent administrative proceedings, i. e., the redevelopment plan, the proposed land use, etc. It is a denial of equal protection of the laws

to plaintiffs to arbitrarily apply the Title 40 blight act to a blight proceeding governed by Title 55 and thereby exclude plaintiffs from the provisions and protection of Title 55.

The bypassing of Title 55 by the municipality becomes extremely important with regard to R. S. 55:14A-39.1, the anti-discrimination provision. The 74 block area involved in the instant petition is primarily residential, having 6,356 dwelling units and 3,000 structures. The area is predominantly (85%+) Negro. The issue of "Negro clearance" was raised in the appeal and in the petition submitted to the Supreme Court of New Jersey. Since the blight declaration professed to have been made pursuant to Title 40 (which does not include an anti-discrimination provision), plaintiffs were not alerted to their statutory right to not be discriminated against in any way and during any proceeding or step from the initial blight hearing throughout any subsequent administrative or other proceedings covered by Title 55.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

SEYMOUR MARGULIES,
Counsel for Petitioners.

FELIX-RAMON NEALS,
Associate Counsel for Petitioners.

APPENDIX A.

Statutes and Constitutional Provisions Involved.

The Constitution of the United States.

Article XIV. Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U. S. C. 1455(d).

"(d) Acquisition of land; public hearings.

No land for any project to be assisted under this subchapter shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing."

New Jersey Constitution, Article 8, Sec. 3, Par. 1.

"The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for those purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time during which the profits of and dividends payable by any private corporation enjoying such tax ex-

emption shall be limited by law. The conditions of use, ownership, management and control of such improvements shall be regulated by law."

R. S. 40:55-21.1, "Blighted area" defined.

As used in this act, the term "blighted area" shall mean an area in any municipality wherein there exists any of the conditions hereinafter enumerated:

(a) The generality of buildings used as dwellings or the dwelling accommodations therein are substandard, unsafe, insanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living;

(b) The discontinuance of the use of buildings previously used for manufacturing or industrial purposes, the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenantable;

(c) Unimproved vacant land, which has remained so for a period of ten years prior to the determination hereinafter referred to, and which land by reason of its location, or remoteness from developed sections or portions of such municipality, or lack of means of access to such other parts thereof, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital;

(d) Areas (including slum area), with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community;

(e) A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare. L. 1949, c. 186, p. 626, Sec. 1, as amended L. 1951, c. 248, p. 865, Sec. 1."

R. S. 40:55-21.4. Hearing.

"The governing body or the planning board shall thereupon cause a hearing to be held at an appointed time and place for the purpose of hearing persons interested in, or who would be affected by, a determination that the area is a blighted area, as defined in this act and who favor or who are against such a determination. L. 1949, c. 187, p. 627, Sec. 4."

R. S. 40:55-21.5. Notice of hearing.

"A notice of any such hearing shall be given setting forth the general boundaries of the area to be investigated and stating that a map has been prepared and can be inspected at the office of the clerk of the municipality. A copy of such notice shall be published in a newspaper of general circulation in the municipality once each week for two consecutive weeks, and the last publication shall be not less than ten days prior to the date set for the hearing. A copy of the notice shall be mailed at least ten days prior to the date set for the hearing to the last owner, if any, of each parcel of property within the area according to the assessment records of the municipality. A notice shall also be sent to any and all persons at his, or their, last known address, if any, whose names are noted on said assessment records as claimants of an interest in any such parcel. The assessor of the municipality shall make such a notation upon the said records when requested so to do by any person claim-

ing to have an interest in any parcel of property in the municipality. The notice shall be published and mailed by the clerk of the municipality, or by such clerk or official as the governing body or planning board shall designate. Failure to mail any such notice shall not invalidate the investigation or determination thereon. L. 1949, c. 187, p. 627, Sec. 5."

R. S. 40:55-21.6. Objections; determination; service of copy of resolution.

"At the hearing, which may be adjourned from time to time, the governing body, or planning board, as the case may be, shall hear all persons interested in the investigation and shall consider any, and all written objections that may be filed and any evidence which may be adduced in support of the objections or any opposition to a determination that the area is a blighted area. After the hearing, the governing body, or planning board, shall by resolution, determine that the area or any part thereof, is or is not, a blighted area, as defined in this act. A determination that the area or any part thereof is a blighted area, if supported by substantial evidence, shall be binding and conclusive upon all persons affected by the determination. If the determination is that the area or any part thereof is a blighted area, the governing body or planning board, within ten days after such determination shall cause to be served a copy of the resolution upon each person who filed a written objection prior to the hearing: *Provided*, the address of the objector was stated in, or upon, the written objection.

Such service may be made (a) by delivering a copy of the resolution personally to the objector, (b) by mailing such copy addressed to the objector according to his said stated address, or (c) by leaving such copy at said stated address for the objector with a person of suitable age and discretion. L. 1949, c. 187, p. 628, Sec. 6."

R. S. 40:55-21.7. Approval or modification of determination.

"Where the determination is made by a planning board, it shall be subject to approval, disapproval or modification by the governing body of the municipality. The determination shall be submitted by the planning board to the governing body of the municipality in the form of a report and final action thereon shall be taken by the said governing body within thirty days after the submission of said report. L. 1949, c. 187, p. 628, Sec. 7."

R. S. 40:55-21.8. Review of determination, time for.

"Where written objections shall have been filed and the determination is that an area is a blighted area, no further proceedings shall be taken by the governing body of the municipality upon such determination until thirty days shall have elapsed after such determination. If within said thirty-day period an action to review the determination is commenced in the Superior Court, no further proceedings shall be taken by the said governing body upon such determination during the pendency of such action. L. 1949, c. 187, p. 628, Sec. 8."

R. S. 40:55-21.9. Persons entitled to review; time for review action; incidental orders.

"Any person who shall have filed such a written objection with the governing body, or planning board, as the case may be, may have a determination that an area is a blighted area reviewed by the Superior Court of New Jersey by procedure in lieu of prerogative writs. An action for any such review shall be commenced within thirty days after the determination by the governing body of the municipality either in the first instance, or by final action upon a report by a planning board. In any such action, the said court may make any incidental order that shall be deemed by the court to be proper. L. 1949, c. 187, p. 629, Sec. 9."

R. S. 40:55-21.10. Acquisition of property within blighted area.

"If the determination is that an area is a blighted area, the governing body of the municipality may, but shall not be required to, acquire the real property within the area by purchase, or by eminent domain proceedings, and may proceed with the clearance, replanning, development or redevelopment of the area as a public purpose and for public use, or the said governing body may, by resolution agree that a private corporation may undertake such clearance, replanning, development or redevelopment in accordance with statutory authority and subject to the provisions of paragraph 1, Section III, Article VIII, of the Constitution; *provided, however,* that the power of eminent domain hereinbefore conferred upon the governing body of the municipality shall not be exercised to acquire, for any of the purposes of this act, any property or interests in property owned or used by any public utility (as defined in section 48:2-13 of the Revised Statutes) in furnishing any commodity or service which by law it is authorized to furnish. L. 1949, c. 187, p. 629, Sec. 10."

R. S. 55:14A-32. "Blighted area" defined.

"The term "blighted area" is defined to be that portion of a municipality which by reason of, or because of, any of the conditions hereinafter enumerated is found and determined as provided by law to be a social or economic liability to such municipality.

(a) The generality of buildings used as dwellings or the dwelling accommodations therein are substandard, unsafe, insanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living;

(b) The discontinuance of the use of buildings previously used for manufacturing or industrial purposes, the

abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenantable;

(c) Unimproved vacant land, which has remained so for a period of ten years prior to the determination hereinafter referred to, and which land by reason of its location or remoteness from developed sections or portions of such municipality, or lack of means of access to such other parts thereof, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital;

(d) Areas (including slum areas), with buildings or improvements which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community;

(e) A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare. L. 1949, c. 300, p. 917, Sec. 2."

R. S. 55:14A-33. Determination that area is blighted area.

"The determination that an area is a "blighted area," within the meaning of such term as defined herein, shall be made solely by the municipality, after investigation, notice and hearing, in accordance with the provisions of chapter one hundred eighty-seven of the laws of one thousand nine hundred and forty-nine. L. 1949, c. 300, p. 918, Sec. 3."

Appendix A—Statutes and Constitutional Provisions Involved.

R. S. 55:14A-39.1. Discrimination.

"For all of the purposes of the act to which this act is a supplement, no person shall because of race, religious principles, color, national origin or ancestry be subject to any discrimination. L. 1950, c. 105, p. 198, Sec. 1."

R. S. 55:14A-43. Financial Aid.

"An authority may borrow money or accept contributions or capital grants from the Federal Government to assist in its undertaking redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid for redevelopment projects (including obligating itself in any contract with the Federal Government for financial assistance, to convey to the Federal Government the project to which said contract relates upon the occurrence of a substantial default thereunder, in the same manner as it may do to secure such aid in connection with slum clearance and housing projects under the provisions of the local housing authorities law. L. 1949, c. 300, p. 924, Sec. 13, as amended L. 1950, c. 363, p. 906, Sec. 2."

R. S. 55:14A-48. Inconsistent laws.

"Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall control. L. 1949, c. 300, p. 925, Sec. 18."

R. S. 55:14A-50. Additional authority of housing authority to carry out redevelopment projects.

"In addition to its authority under provisions of the act to which this act is a supplement,[1] an authority is hereby authorized to plan, initiate and carry out a redevelopment project as herein defined. As used in this act, a "redevelopment project" shall mean any undertakings and

[1] Section 55:14A-31 et seq.

activities for the elimination (and for the prevention of the development or spread) of blighted, deteriorated, or deteriorating areas and may involve any work or undertaking for such purpose constituting a redevelopment project as authorized by the act to which this act is a supplement or any conservation or rehabilitation work, or any combination of such redevelopment projects and such conservation or rehabilitation work or undertakings. For this purpose, "conservation or rehabilitation work" may include (1) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition, removal, or rehabilitation of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the objectives of the redevelopment project; and (4) the disposition for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project; provided that such disposition shall be in the manner prescribed in the act to which this act is a supplement for the disposition of property in a redevelopment project area. As used in this act the term "blighted, deteriorated, or deteriorating area" may include an area determined by the municipality to be blighted in accordance with the provisions of chapter 187 of the laws of 1949[2] and, in addition areas which are determined by the municipality, pursuant to the same procedures as provided in said chapter, to be blighted, deteriorated, or de-

---

[2] Section 40:55-21.1 et seq."

teriorating because of structures or improvements which are dilapidated, obsolete, or characterized by disrepair, lack of ventilation or light or sanitary facilities, faulty arrangement, location or design, or other unhealthful or unsafe conditions. L. 1956, c. 211, p. 756, Sec. 2.

R. S. 55:14A-52. Powers of housing authority.

"An authority shall have all the powers necessary to undertake and carry out the redevelopment plans and redevelopment projects authorized by this act, including the authority to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept grants from the Federal Government or other source and to exercise any other powers which the act to which this act is a supplement confers on an authority with respect to redevelopment projects authorized by that act. In connection with the planning and undertaking of any redevelopment plan or redevelopment project authorized by this act, the authority the municipality, and all public and private officers, agencies, and bodies shall have all the rights, powers, privileges, and immunities which they have with respect to a redevelopment plan or redevelopment project authorized by the act to which this act is a supplement in the same manner as though all of the provisions of said act applicable to such redevelopment plan or redevelopment project were applicable to a redevelopment plan or redevelopment project authorized by this act; provided that for such purpose the word "redevelopment" as used in the act to which this act is a supplement shall include "conservation or rehabilitation," the term "blighted" as used in said act shall mean "blighted, deteriorated; or deteriorating"; and provided further that this section shall not change the corporate name of the authority or the short title of the act to which this act is a supplement, or amend any section of the act

to which this act is a supplement. In addition to the surveys and plans which an authority is otherwise authorized to make, an authority is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, and (ii) plans for the enforcement of laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements. The authority is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of blight. L. 1956, c. 211, p. 757, Sec. 4."

R. S. 55:14E-6. Acquisition of land; condemnation.

"Whenever any such contract shall have been so authorized and accepted, the municipality shall forthwith undertake to acquire the tract of land involved, at its expense, and may, if so requested by the applicant, deliver possession of any part or parcel included therein, as acquired, to enable the applicant to commence rehabilitation, demolition or construction of new facilities; and in such case, ground rent payable to the municipality shall be only that proportionate part of the total ground rent which the area delivered to the applicant is of the total area for which such total ground rent is payable. Should condemnation be necessary the municipality is authorized following the institution by it of condemnation proceedings by the presentation of its petition for the appointment of commissioners, in the manner provided in chapter one of Title 20 of the Revised Statutes, to enter upon and take possession of any of the plots or parcels involved, in advance of making compensation, and to deliver possession to the applicant for the

same purposes. In such condemnation cases interest on the compensation awarded shall run from the date of entry by the municipality; and because property shall be condemned under the act at public expense, and shall be subject in its use to the limitations and restrictions herein provided, interest on all compensation awarded for property condemned under this act shall be at the rate of two and one-half per centum (2½%) per annum, notwithstanding any law of this State to the contrary. In any one condemnation proceeding instituted by a municipality under the provisions of this act the municipality may join, in its petition, all or any number of the separate parcels or plots to be condemned and the owners or occupants, if any, and persons appearing of record to have any interest in such separate plots or parcels. L. 1946, c. 52, p. 113, Sec. 6, as amended L. 1949, c. 185, p. 613, Sec. 9."

R. S. 55:14E-21. "Blighted Area" defined.

"The term "blighted area" is defined to be that portion of a municipality which by reason of, or because of, any of the conditions hereinafter enumerated is found and determined in the manner herein provided to be a social or economic liability to such municipality:

(a) The generality of buildings used as dwellings or the dwelling accommodations therein are substandard, unsafe, unsanitary, dilapidated or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living;

(b) The discontinuance of the use of buildings previously used for manufacturing or industrial purposes, the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenable;

(c) Unimproved vacant land, which has remained so for a period of ten years prior to the determination hereinafter referred to, and which land by reason of its location, or remoteness from developed sections or portions of such municipality, or lack of means of access to such other parts thereof, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

It is hereby determined and declared that such conditions are, or any of them is responsible for, or likely to lead to, ill health, the spread of disease depressed standard of living and poor morals, the growth of delinquency or crime, the presence of undue fire hazards, or the inability of the properties to produce income sufficient to enable the owners or landlords to pay taxes, or to furnish safe and adequate living accommodations. L. 1949, c. 185, p. 607, Sec. 3."

APPENDIX B.

Order Dismissing Appeal.

SUPREME COURT OF NEW JERSEY

This matter having been duly presented to the Court, it is Ordered that the motion to dismiss appeal is granted.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this thirteenth day of April 1964.

JOHN H. GILDEA
Clerk

FILED
Apr 13 1964

JOHN H. GILDEA
Clerk

APPENDIX B.

Order Denying Petition.

SUPREME COURT OF NEW JERSEY

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the ninth day of March 1964.

JOHN H. GILDEA
Clerk of the Supreme Court

FILED
Mar 9 1964

JOHN H. GILDEA
Clerk

APPENDIX B.

Opinion of Appellate Division.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-101-62.

Argued December 16, 1963—Decided January 10, 1964.

Before JUDGES GOLDMANN, KILKENNY and COLLESTER.

MR. SEYMOUR MARGULIES argued the cause for appellants (MESSRS. LEVY, LEMKEN & MARGULIES, attorneys; MR. FELIX-RAMON NEALS, associate counsel and on the brief; MR. MARGULIES of counsel).

MR. WILLIAM H. WALLS argued the cause for respondents City of Newark and Central Planning Board of the City of Newark (MR. NORMAN N. SCHIFF, attorney).

MR. AUGUSTINE J. KELLY argued the cause for respondent Housing Authority of the City of Newark.

The opinion of the court was delivered by
KILKENNY, *J. A. D.*

Plaintiffs, residents and property owners of the City of Newark, appeal from a judgment of the Law Division adjudging that the determination of the Central Planning Board, that the area bounded by 17th Avenue on the north, Watson Avenue on the south, Belmont Avenue on the east and Bergen Street on the west is a blighted area within the meaning of N. J. S. A. 40:55-21.1, was based on substantial evidence and proper, and that the action of the municipal council in approving that determination was likewise justified. The judgment sustained the actions of the Central

Planning Board and municipal council with reference to the above stated area and denied the relief sought by plaintiffs in their proceeding in lieu of prerogative writs. Plaintiffs also appeal from an earlier order denying their motion for summary judgment.

On June 7, 1961, the municipal council of the City of Newark adopted its Resolution 7 Rq, authorizing the Central Planning Board of the city to make an investigation and hold a public hearing to determine whether the Light Industrial Project Area, Project N. J. R-32, is a blighted area, "all as required by Chapter 187 of the Laws of 1949 of New Jersey (R. S. 40:55-21.1 *et seq.*) as amended, and by Chapter 211 of the Laws of 1956 of New Jersey (R. S. 55:14A-31 *et seq.*)."

The Housing Authority of the City of Newark, by virtue of the authority vested in it by Chapter 300 of the Laws of 1949 of New Jersey (N. J. S. A. 55:14A), as amended, had selected the described area for slum clearance, redevelopment and rehabilitation. A determination by the planning board that the area is blighted is a necessary preliminary step in furthering the project and obtaining financial assistance from the Federal Government under Title I of the Housing Act of 1949, as amended, and the Housing Act of 1954.

The planning board made an investigation and, after giving due notice, held a public hearing on June 29, 1961, as required by the provisions of N. J. S. A. 40:55-21.4. Plaintiffs and other interested persons in attendance were afforded a full opportunity to state their views and present any evidence in support thereof. Plaintiffs asked permission at this hearing to examine certain records made in connection with a survey of the properties in the project area, but their request was refused on the ground that the records contained, *inter alia*, confidential information. Not

only did these survey cards list the presence or absence of the various household utilities and facilities, but they also set forth the number of occupants and their personal income.

The planning board had before it for study not only the views and exhibits presented at the aforesaid public hearing, but it also had the benefit of the city's Master Plan of 1947, which had marked this area for rehabilitation and clearance, the "Existing Conditions Survey," the Jacobs report, the Third and Final Report on Newark prepared by the staff of the Newark Planning Board, maps and other data. In addition, the planning board made a personal inspection of the area.

From all of the evidence before it, the planning board adopted its resolution on September 15, 1961, in which it determined that the area was a blighted area as defined in "Chapter 187 of the Laws of 1949." The preamble of this resolution referred to the authorization given to it by the resolution of June 7, 1961 of the municipal council and also to its own "Blight Statement" submitted and approved at its meeting of September 13, 1961. Copies of the planning board's resolution and blight statement were forwarded to the municipal council and receipt thereof was noted in the council's minutes of September 21, 1961. The planning board instructed the council not to take any action on its determination for 30 days because written objections had been filed.

The planning board's instructions were evidently inspired by N. J. S. A. 40:55-21.8 which provides that, where written objections shall have been filed and the determination is that the area is blighted, no further proceedings shall be taken by the governing body upon such determination until 30 days shall have elapsed after such determination.

The corporation counsel of the city advised that it was the duty of the planning board to submit its determination without any instruction as to the time within which the council should take action. On his advice, the council returned the determination and blight statement to the planning board on October 27, 1961 with the request that it reconsider the matter and resubmit its determination to the council without any instructions as to the time within which action thereon shall be taken by the council.

On October 30, 1961, the planning board reconsidered the determination adopted by it on September 15, 1961, reaffirmed the determination, and ordered it sent to the council for its action. The determination was forwarded on November 3, 1961.

On November 28, 1961, the council adopted a resolution approving the determination of the planning board.

Plaintiffs then filed their proceeding in lieu of prerogative writs in the Law Division on December 15, 1961. Their motion for summary judgment was denied on June 12, 1962. However, the trial judge felt that the planning board's refusal to allow plaintiffs to examine the survey cards was improper and granted their motion to inspect. He also permitted them to prepare exhibits of their own based upon the data in defendants' exhibits. In considering the case on its merits, he considered all of the exhibits. In addition, he made a personal tour of the area in question in the company of all counsel. The impression gained by the trial judge during that tour was that the area "is one of hopelessly irreversible deterioration and dilapidation." He found substantiation of the conclusion of the defendant agencies not only from the impressions generated by that tour but also in the "substantial evidence in the record." The result was his judgment, first noted above, now before us for review.

Plaintiffs advance many arguments for a reversal of the Law Division judgment. Some of the arguments made under later points are merely repetitive of contentions made under earlier points. Any arguments not specifically adverted to herein will be deemed to be either lacking in substantial merit or, where merely duplicative, covered by the disposition of the contentions as first made.

I.

Plaintiffs argue that they were not afforded a hearing and a determination in accordance with the applicable statutory provisions. They claim that their right to discovery was barred and the planning board's determination was based on evidence which they were not given an opportunity to explain, rebut or test for trustworthiness. While conceding that the Law Division allowed them to examine the exhibits which they were not permitted to examine at the local hearing, on the ground that they contained confidential information, and permitted them to introduce evidence in rebuttal, they assert that the court did not consider such evidence or make any finding thereon. Under this point they furth r maintain that the planning board hearing was improper in that two members of the municipal council, who would ultimately pass upon the board's determination, were present and spoke at the hearing.

The planning board's function at such a hearing is that of a legislative fact-finding agency rather than a *quasi*-judicial body. *Sorbino* v. *New Brunswick*, 43 N. J. Super. 554, 577 (Law Div. 1957). The essentials of due process normally associated with a judicial hearing are not required in legislative hearings of this type. *Stahl* v. *Paterson Bd. of Finance*, 62 N. J. Super. 562, 583 (Law Div. 1960), affirmed 69 N. J. Super. 242 (App. Div. 1960). There

is no right of cross examination, or right to have subpoenas issued to compel the attendance of witnesses. *Wilson* v. *Long Branch*, 27 N. J. 360, 389 (1950). Sworn testimony is not required or ordinarily given. Any interested citizen may appear and state his views or offer his evidence *pro* or *con* the issue as to whether the particular area is or is not blighted. As in the *Stahl* case, plaintiffs had ample time and opportunity to present their case. If they failed to do so, it was their own neglect. The formal setting of a trial is not essential. *Stahl* v. *Paterson Bd. of Finance*, *supra*, 69 N. J. Super., at p. 245.

As the Law Division noted in its opinion, any inability of plaintiffs to examine the survey cards at the local hearing was remedied when the Law Division gave them the opportunity to inspect them and submit any evidence they wished to submit to rebut them. They did so. Their expert witness before the Law Division attacked the methods used by the Newark Housing Authority in conducting its "Existing Conditions Survey." The trial judge found that the "plaintiffs have not, however, shown that the methods used were arbitrary or unreasonable." Criteria considered by the agency included such items as:

1. No flush toilet in dwelling or toilet shared by two or more dwellings.

2. No private bathtub or shower in dwelling.

3. No water or hot water in dwelling.

4. No kitchen in dwelling or kitchen shared by two or more dwellings.

5. No central heating in multi-family structures.

6. Dilapidation of dwelling.

The trial judge particularly noted plaintiffs' argument that lack of central heating is not a basic deficiency. He

took judicial notice that "many occupants of city dwellings lacking in central heating use space heaters creating a substantial danger of fire in the community."

It is not correct to say that the Law Division did not consider the rebuttal evidence offered by plaintiffs or make any findings thereon. The trial judge's opinion reflects that he considered "all" of the exhibits, including those he had permitted plaintiffs to submit, made his own personal tour which yielded the impressions noted above, and found substantial evidence in the record to support the determination of the planning board and council. His findings could not be more explicit. His judgment, first noted above, speaks for itself.

There is no substantial merit in plaintiffs' contention that, if they had inspected the cards at the planning board hearing and produced their expert testimony there, they might have induced the planning board to reach an opposite result. Plaintiffs apparently had no experts at that meeting. As stated by Stanley B. Winters, one of the plaintiffs, in his affidavit:

> "We did not obtain experts, as it was our intention to contradict any factual findings which might be produced before the Planning Board relative to blight conditions as they allegedly exist south of Avon Avenue."

Moreover, it is unrealistic to assume that the additional proofs found unpersuasive by the trial judge would have probably brought about a different determination at the planning board level. The board's personal inspection and the plethora of evidence before it establishing that the area was blighted far outweighed the opinion of plaintiffs' expert.

As to plaintiffs' claim that participation by two members of the council in the planning board hearing made the hearing improper, the fact of their presence is true but the asserted legal consequence does not follow. N. J. S. A. 40:55-1.4 provides that a member of the governing body shall serve as a member of the planning board. Councilman Gordon was appointed by the council as its representative on the planning board. His presence at the hearing was, therefore, in the performance of his public duties and sanctioned by law. The other member of the council, present at the planning board hearing, Mrs. Cooper, spoke but only to express the view that the project area be reduced in size. Later, when the planning board's determination came before the council for action, she refrained from voting. Obviously, the planning board's determination was not rendered nugatory by the aforesaid conduct of these two members of the nine-member council.

II.

Plaintiffs' next contention is that the planning board's determination was *ultra vires*. They assert that it (a) violated N. J. S. A. 40:55-21.6; (b) was not made pursuant to the resolution of the municipal council; and (c) was not made pursuant to N. J. S. A. 55:14A-32.

The determination of the planning board did not violate N. J. S. A. 40:55-21.6. That section provides that the planning board "shall hear all persons interested in the investigation and shall consider any, and all, written objections that may be filed and any evidence which may be adduced in support of the objections, or any opposition to a determination that the area is a blighted area." After the hearing, the board is required to make its determination, by resolution, that the area is or is not blighted, as

defined in the act. The hearing was held and opportunity was given to all interested persons to be heard, file objections and present evidence. The determination in resolution form was made. Plaintiffs' further argument under this subhead is merely repetitive of their argument under Point I, *supra,* and is disposed of for the reasons noted above.

The determination was made pursuant to the resolution of the municipal council. The board's resolution refers in its preamble almost verbatim to the authorization given to it as expressed in the council's resolution and recites the investigation, public hearing and its determination by virtue thereof.

Plaintiffs raise the technical objection that the board expressed its determination that the project area is a blighted area "as defined in said Chapter 187 of the Laws of 1949," instead of saying "as defined in N. J. S. A. 55:14A-32 (L. 1949, c. 300)." It is apparent from a reading of the entire resolution, and especially the preamble wherein the council's authorization referring both to L. 1949, c. 187 and N. J. S. A. 55:14A-31 *et seq.* is specifically noted, that the board found the area blighted pursuant to the council's directive. To set aside its finding for lack of some formalistic recital of the defining statute would exalt from above substance and merely delay official action in the public interest. Even were it necessary—and we do not so hold,—confirmatory resolutions by the board and council could readily reflect their obvious determination that the area was blighted according to the pertinent statutory definition.

Moreover, the definition of "blighted area" is essentially the same under N. J. S. A. 55:14A-32 (L. 1949, c. 300) as it is under N. J. S. A. 40:55-21.1 (L. 1949, c. 187). N. J. S. A. 55:14A-32 provides:

> "The term 'blighted area' is defined to be that portion of a municipality which by reason of, or because of, any of the conditions hereinafter enumerated is found and determined by law to be a social or economic liability to such municipality. * * *"

The conditions then enumerated from item (a) through item (e) are identical with the conditions (a) through (e) listed in the definition of "blighted area" in N. J. S. A. 40:55-21.1 (L. 1949, c. 187). In substance, therefore, exactly the same conditions which must be found under the one must be found under the other statute before the board can legally make a finding that the area is blighted. The recital in N. J. S. A. 55:14A-32 that the area must be found to be "a social or economic liability" to the municipality is nothing more than a general conclusion flowing automatically from the finding of the existence of the statutorily required conditions evidentiary thereof. The "blight statement" accompanying the board's resolution makes it abundantly clear that the conditions found to exist made the area a social and economic liability to the city.

The close interlocking relationship between the two statutes is also made manifest by N. J. S. A. 55:14A-33, which provides:

> "The determination that an area is a 'blighted area' within the meaning of such term as defined herein, shall be made solely by the municipality, after investigation, notice and hearing, in accordance with the provisions of chapter one hundred eighty-seven of the laws of one thousand nine hundred and forty-nine."

Thus, we are not dealing with totally unrelated statutes and divergent concepts of the conditions which constitute an area "blighted." Rather, the one incorporates the other by reference and the expressed conditions are the same.

III.

Plaintiffs assert that the council's resolution approving the plainning board's determination is *ultra vires*. Besides their contention that the board's determination was invalid and *ultra vires* for the reasons noted and disposed of above, they argue that the council's resolution was void because (a) not based on a valid report of the planning board, as required by N. J. S. A. 40:55-21.7: and (b) the council did not take action on the board's determination within 30 days after its submission, as required by the same statute.

N. J. S. A. 40:55-21.7 provides:

> "Where the determination is made by a planning board, it shall be subject to approval, disapproval or modification by the governing body of the municipality. The determination shall be submitted by the planning board to the governing body of the municipality in the form of a report and final action thereon shall be taken by the said governing body within thirty days after the submission of the report."

The planning board, by resolution, determined that the area was a blighted area, as required by N. J. S. A. 40:55-21.6. It sent a copy thereof to the council, together with a copy of its "blight statement," to which it made reference in its resolution. These documents constituted its "report." N. J. S. A. 40:55-21.7 contains no specifics as to what the report shall contain. Plaintiffs argue that the "blight statement" was a comment, rather than a report conveying information. We do not agree. The statement might have been more replete with details, but it was adequate to satisfy the statutory requirement.

The council's approval on November 28, 1961 was within 30 days of the board's final submission of its determination on November 3, 1961. Plaintiffs argue that the 30-day period must be computed from the date of the original submission on September 15, 1961. That is generally true. N. J. S. A. 40:55-21.7; *Griggs* v. *Princeton Borough*, 33 N. J. 207, 224 (1960). *Griggs* held that, where written objections to the determination of blight have been filed, the provision in N. J. S. A. 40:55-21.8 that no "further proceedings" shall be taken by the governing body until 30 days shall have elapsed after such determination does not refer to the governing body's approval or disapproval of the planning board's report, but to action taken under N. J. S. A. 40:55-21.10 and 21.11 after its action on the planning board's report. However, where the report was returned for reconsideration and correction, as here, and then resubmitted, the council was justified in approving it within 30 days of such final submission. Moreover, it would seem to disserve the legislative intent to hold that the 30-day limitation for action by the governing body is so mandatory in character as to render nugatory the planning board's and council's determinations for failure to act within 30 days of the original submission, absent any showing that plaintiffs, or any other persons, were aggrieved thereby.

IV.

What we have said above also disposes of plaintiffs' further contentions, substantially duplicative in character, that (a) the determinations of the planning board, the council and the Law Division were erroneously based on N. J. S. A. 40:55-21.6; (b) the determination of the planning board was arbitrary, capricious, unreasonable and not supported by substantial evidence; (c) the Law Divi-

sion erred in denying plaintiffs' motion for summary judgment; and (d) the planning board and court failed to make fact findings.

A full review of the record shows these contentions lacking in substantial merit. No useful purpose would be served by detailing the evidence of blight. Suffice it to say that there was substantial evidence to support the determinations made and to negate any charge that they were arbitrary, capricious or unreasonable. The trial judge summed up the character of the area as "one of hopelessly irreversible deterioration and dilapidation." The blight statement sums it up this way:

> "The complete investigation and resultant analysis points out with unmistakeable clarity the fact that unsatisfactory and substandard housing conditions permeate the area. These conditions accelerated through the years have created more than patent physical deterioration.
>
> To allow the continuance of this Sectional decay is unthinkable. Acquiescence and toleration would abet the spread of suffocation of community spirit. Living under such substandard conditions is doubly insufferable when one views what will transpire in the next several years.
>
> Tomorrow must be prepared for; it is certain to come. Future generations must be accorded a climate of living conditions in livable surroundings. This is their entitlement—this is their due. We would be remiss in our duty were we to do otherwise.
>
> This Board has come to the conclusion that this area is blighted."

And so say we.

V.

The final challenge made by plaintiffs is that the determination of the board and council is discriminatory and prohibited by N. J. S. A. 55:14A-39.1. This section provides:

> "For all of the purposes of the act to which this act is a supplement no person shall because of race, religious principle, color, national origin or ancestry be subject to any discrimination."

Pointing to the 1960 U. S. Census, showing that 79.6% of the residents in the area are non-white, and the proposal to redevelop the area for light industrial uses, plaintiffs make the bald assertion that "the result of the blight declaration is 'Negro clearance.'"

Plaintiffs misconceive the purpose and effect of a declaration of blight. It is a necessary step in order to enable the local housing authority to acquire land in the blighted area for redevelopment and rehabilitation by private enterprise or public agencies with federal assistance under Title I of the Housing Act. A declaration of blight is not a taking of property. It is not a determination as to its future use. As stated in *Sorbino* v. *City of New Brunswick*, 43 N. J. Super. 554, 569 (Law Div. 1957):

> "The mere determination that the area in which plaintiffs' properties are situated is a 'blighted area' may or may not lead to subsequent acquisition by the city of the area for clearance, development and redevelopment."

The charge of discrimination finds no support in the record, is premature, asserted, and is barren of any merit herein.

For the above stated reasons, the judgment of the Law Division is affirmed.

APPENDIX B.

Judgment.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, ESSEX COUNTY

Docket No. L-7137-61 P. W.

The above entitled cause having come on for trial before this Court on June 21, 1962, in the presence of Daniel I. Lubetkin, Attorney for Plaintiffs, Peter M. Adubato, appearing for Vincent P. Torppey, Attorney for Defendants City of Newark and Central Planning Board of the City of Newark, and Augustine J. Kelly, Attorney for Defendant Housing Authority of the City of Newark; and the Court being of the opinion that the Plaintiffs are not entitled to the relief demanded in the Complaint:

IT IS, on this 11th day of September, 1962,

ADJUDGED, That the Determination of the Central Planning Board of the City of Newark that the area bounded by 17th Avenue on the North, Watson Avenue on the South, Belmont Avenue on the East and Bergen Street on the West, is a blighted area within the meaning of N. J. S. A. 40:55-21.1 et seq., was based on substantial evidence, and said Determination was proper, and the action of the Municipal Council in approving that Determination was likewise justified.

The actions of the Central Planning Board of the City of Newark and the Municipal Council of the City of Newark with reference to the above stated area are sustained, and the relief sought by Plaintiffs is denied, without costs.

JOHN F. CRANE,
J. S. C.
Temporarily Assigned.

Approved as to form:

DANIEL I. LUBETKIN,
Attorney for Plaintiffs.

NORMAN N. SCHIFF,
Substituted Attorney for Defendants,
City of Newark and Central Planning Board
of the City of Newark.

AUGUSTINE J. KELLY,
Attorney for Defendant,
Housing Authority of the City of Newark.

APPENDIX B.

Letter Opinion.

ESSEX COUNTY COURT

Chambers of JOHN F. CRANE, Judge

Court House, Newark 2, N. J.
August 3, 1962

* * * * * *

Gentlemen:

This is an action in lieu of prerogative writ wherein the plaintiffs, residents of the City of Newark, seek to set aside a declaration by the Central Planning Board of the City of Newark that an area of the City is blighted within the meaning of N. J. S. A. 40:55-21.1 *et seq.* Also under attack is a resolution of the Municipal Council of the City of Newark approving the determination of the Central Planning Board. The area in question is bounded on the North by 17th Avenue; on the South by Watson Avenue; on the East by Belmont Avenue; and on the West by Bergen Street.

Plaintiffs have alleged several grounds on the basis of which they claim that the resolution should be set aside. It is first alleged that failure to meet the precise time schedule set forth in N. J. S. A. 40:55-21.1 *et seq.* is fatal. The principal attack however is directed to the manner in which the Central Planning Board obtained evidence as well as disagreement with the ultimate conclusions reached.

In my view the deviation from the prescribed time schedule was insubstantial. None of the interested parties were inhibited in presenting their views as a result. Ample opportunity was given by the Central Planning Board to

all interested parties to present their views. I have previously denied a motion for summary judgment on this issue.

Plaintiffs have also objected that the Chairman of the Planning Board refused to allow objectors to look at and examine the exhibits introduced. I have previously indicated my view that this was improper and granted a motion to permit plaintiffs to inspect. A public agency is not privileged to conduct its business in a manner which denies interested citizens access to the fundamental data upon which it acts. Pursuant to the order plaintiffs have inspected the exhibits and prepared exhibits of their own based upon data contained in defendants' exhibits. I have examined all of the exhibits in considering the case on its merits. Thus any liability of plaintiffs to examine the basis of the declaration has been remedied.

The attack on the date suggests that improper methods were used. The criteria on which the determination was based included such items as (Ex. D-13, p. 3)

"1. No flush toilet in dwelling or toilet shared by two or more dwellings.

2. No private bathtub or shower in dwelling.

3. No water or no hot water in dwelling.

4. No kitchen in dwelling or kitchen shared by two or more dwellings.

5. No central heating in multi-family structures.

6. Dilapidation of dwelling."

A large percentage of the dwellings (64%) were found to be substandard on these criteria.

The methods used by the Newark Housing Authority in conducting its Existing Conditions Survey were attacked

by an expert witness produced by the plaintiffs. Perhaps other methods of gathering and processing the data could have been used. The plaintiffs have not, however, shown that the methods used were arbitrary or unreasonable. In testing quasi-legislative actions such as this, considerable latitude must be given to the agency making the determination. Such actions are not to be set aside "in the absence of a showing of such error as bespeaks arbitrariness, unreasonableness and substantial inequity." *In the Matter of the Borough of Little Ferry*, 40 N. J. Super. 536, 541 (App. Div. 1956).

Plaintiffs argue that lack of central heating is not a basic deficiency. In my judgment it is a basic deficiency in this day and age and in this climate. It is also common knowledge that many occupants of city dwellings lacking in central heating use space heaters creating a substantial danger of fire in the community.

The record was supplemented by a personal tour of the area in question by the court in the company of all counsel. The impressions gained during the tour substantiate the conclusion of the defendant agencies. One gets the impression regrettably that the area has undergone steady and progressive period of deterioration. Here and there an owner has made a valiant effort to stem the tide and has maintained his property in good condition. But the overwhelming impression is one of hopelessly irreversible deterioration and dilapidation. This is particularly true in the northern and central sections of the area. It is true that the southernmost part of the area south of Hawthorne Avenue is not so badly affected. I am sympathetic with the unquestionable hardship this creates upon the owners of property which has been kept in good repair, but the cases have held that the area must be viewed in its entirety. *Kimberline v. Planning Board of Camden*, 73 N. J. Super.

80 (Law Div. 1962). In the absence of a palpable abuse of discretion the courts will not interfere with the boundary lines adopted. *Wilson* v. *Long Branch*, 27 N. J. 360 (1958). Modern urban living is subject to many hazards including the possibility that one's property might be needed for a public purpose or its use controlled for the common good.

The court finds substantial evidence in the record to support the determination of the Central Planning Board and the Municipal Council that the area is blighted within the meaning of N. J. S. A. 40:55-21.1 *et seq.*

An order may be submitted in conformity herewith.

Yours very truly,

JOHN F. CRANE, J. S. C.
(temporarily assigned).

C:hw

[Final judgment entered September 11, 1962.]

APPENDIX B.

Resolution.

RESOLUTION OF THE CITY OF NEWARK, N. J.

Date of Adoption Nov. 28, 1961 No. 7RJ

TITLE: RESOLUTION APPROVING THE DETERMINATION OF THE CENTRAL PLANNING BOARD THAT THE LIGHT INDUSTRIAL PROJECT AREA, PROJECT N. J. R-32, IS A BLIGHTED AREA AS DEFINED IN CHAPTER 187 OF THE LAWS OF 1949.

Approved as to Form and Legality on Basis of Facts set forth.

VINCENT P. TORPPEY
Corporation Counsel

Factual contents certified to by

RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY:

WHEREAS, the Central Planning Board of the City of Newark has given notice that it has adopted the Determination set forth in a resolution adopted by said Board on September 15, 1961, a copy of which is hereto annexed and made a part hereof;

THEREFORE, BE IT RESOLVED, that the Determination of the Central Planning Board be and the same is hereby approved.

RECORD OF COUNCIL VOTE

Councilman	*Aye*		*Aye*	*N. V.*		*Aye*	*Nay*
Addonizio	X	Cooper		X	Santoro		
Brady	X	Gordon	X		Turner		X
Callaghan	X	Melillo		X	Bontempo, Pres	X	

N. V. —Not Voting.

Certified to by me this 29th day of November, 1961.
Adopted at a meeting of the Municipal Council of the City of Newark Nov. 28, 1961.

MICHAEL A. BONTEMPO
President of the Council

HARRY S. REICHENSTEIN
City Clerk

This Resolution when adopted must remain in the custody of the City Clerk. Certified copies are available.

Determination.

DETERMINATION THAT THE LIGHT INDUSTRIAL PROJECT AREA, PROJECT N. J. R-32 IS A BLIGHTED AREA.

WHEREAS, by virtue of Resolution No. TRj adopted by the Municipal Council of the City of Newark, New Jersey, on June 7, 1961, the Central Planning Board was designated to make an investigation, and in connection therewith, hold a public hearing to determine whether Project N. J. R-32, referred to as the Light Industrial Project Area, as described in said Resolution, is or is not a blighted area or a deteriorated area, all as required by Chapter 187 of the Laws of 1949 of New Jersey (N. J. S. A. 40:55-21.1 et seq., as amended), and Chapter 211 of the Laws of 1956 of New Jersey and the Act which it supplements (N. J. S. A. 55:14A-31 et seq., as amended and supplemented); and

WHEREAS, pursuant to said Resolution and in keeping with the statutes referred to, the Central Planning Board caused to be prepared a map showing the boundaries of the area to be investigated and the location of the various parcels of property included therein; and

WHEREAS, the Central Planning Board did give due notice of a public hearing by publishing the notice of hearing in the Newark Evening News and in the Newark Star Ledger; and in addition thereto, did mail a notice of the hearing at least ten days prior to the date set for the hearing to the owner, according to the assessment records

of the City of Newark, of each parcel of property within the area to be investigated; and

WHEREAS, the said public hearing was held on June 29, 1961; at the Council Chamber in the City Hall at 7 P. M.; and all persons desirous of being heard were heard, statements were submitted, and evidence received; and

WHEREAS, the Urban Renewal Committee of the Central Planning Board made a study of the area and submitted its report thereon; and

WHEREAS, in addition thereto, the Central Planning Board made a personal inspection of the area under consideration, and after careful deliberation and study of all the facts and evidence presented, did unanimously pass a motion to declare the area a blighted area as set forth in the "Blight Statement" submitted at a meeting on September 13, 1961;

NOW, THEREFORE, BE IT RESOLVED, that on this 15th day of September, 1961, we the members of the Central Planning Board, do hereby determine that the entire area under investigation and described in said Resolution No. 7Rj as being the area bounded as follows:

> BEGINNING at the intersection of the Westerly line of Belmont Avenue and the Northerly line of Seventeenth Avenue; thence, in a general Westerly direction along the Northerly line of Seventeenth Avenue to the Westerly line of Bergen Street; thence, in a general Southerly direction along the Westerly line of Bergen Street to the centerline of Avon Avenue; thence, in a general Easterly direction to the centerline of Bergen Street; thence, in a general Southerly direction along the centerline of Bergen Street to the Southerly line of Hawthorne Avenue; thence, in a Westerly direction to the Westerly line of Bergen Street; thence, in a general

Southerly direction along the Westerly line of Bergen Street to the Southerly line of Watson Avenue; thence, in a general Easterly direction along the Southerly line of Watson Avenue to the Easterly line of Belmont Avenue; thence, in a general Northerly direction along the Easterly line of Belmont Avenue to the Southerly line of Avon Avenue; thence, in a general Westerly direction along the Southerly line of Avon Avenue, across Belmont Avenue to the Westerly line of Belmont Avenue: thence, in a general Northerly direction along the Westerly line of Belmont Avenue to the Northerly line of Seventeenth Avenue, the point and place of BEGINNING,

referred to as the Light Industrial Project Area, Project N. J. R-32, is a blighted area as defined in said Chapter 187 of the Laws of 1949; and

BE IT FURTHER RESOLVED, that the Chairman be and he is hereby authorized and empowered to notify the City Council of this, our determination.

Blight Statement.

This Board, cognizant of its responsibility, has critically and thoroughly examined all facets, down to the most minute detail, relative to the proposed Light Industrial Area N. J. R-32.

All evidence submitted to this Board, regardless of its affirmative or negative viewpoint, has been solicited, received, carefully weighed and considered.

The Board has utilized personal inspection, knowledge and evidence concerning the area.

Appendix B—Blight Statement.

Blight does not suddenly settle on an area. This random admixture of Residential, Commercial and Industrial uses marks a lack of foresight and produces a patchwork of development. This hodge podge survived to the present time, resulting in a steady downgrade of the area for over fifty years. A railroad spur at grade level marringly extends across its surface.

In the area almost 300 industrial structures exist. Thirty-four of these plants employ more than 1,000 employees and nine have over 3,000 employees. This dispels any concept of the area being purely residential.

Criticism has been evidenced against the area south of Hawthorne Avenue to Watson Avenue. It cannot be stressed too strongly by this Board that the proposed path of Route 78 through this area will segment this smaller section into fractured nondescript parts. Should this route be realigned elsewhere, an all out program of rehabilitation could be the answer.

Statements were made to the effect that the proceedings were pointedly directed at the harassment of minority groups. Those who realize our devotion to our duty are aware of this absurdity. This Board represents all the citizens of the city by sworn obligation and has never wavered from its trust.

There was opposition to the eventual "Land Use" of the area and not to the declaration of blight. It is significant that "Land Use" cannot be resolved until *after* a blight determination has been made. Their concern is mainly for the future use of the land and not for its degree of blight.

Some confusion existed concerning the use of the word "blight." Some residents felt that there was an imputation to them as individuals for living in an area of squalor and in degradation. This is not so and the Board hastens

to correct any false impression of this nature. The definition of "blighted area" in the State Law, gives five alternate descriptions of conditions which are cause for Declaration of Blight.

The term "blighted area" shall mean an area in any municipality wherein there exists any of the conditions hereinafter enumerated:

"(a) The generality of buildings used as dwellings or the dwelling accommodations therein are substandard, unsafe, insanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living;

"(b) The discontinuance of the use of buildings previously used for manufacturing or industrial purposes, the abandonment of such buildings or the same being allowed to fall into so great a state of disrepair as to be untenantable;

"(c) Unimproved vacant land, which has remained so for a period of ten years prior to the determination hereinafter referred to, and which land by reason of its location, or remoteness from developed sections or portions of such municipality, or lack of means of access to such other parts thereof, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital;

"(d)

which by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community;

"(e) A growing or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein and other conditions, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare. L. 1949, c. 187, p. 626, sec. 1, as amended L. 1951, c. 248, p. 865, sec. 1."

The complete investigation and resultant analysis points out with unmistakeable clarity the fact that unsatisfactory and substandard housing conditions permeate the area. These conditions accelerated through the years have created more than patent physical deterioration.

To allow the continuance of this Sectional decay is unthinkable. Acquiescence and toleration would abet the spread of suffocation of community spirit. Living under such substandard conditions is doubly insufferable when one views what will transpire in the next several years.

Tomorrow must be prepared for; it is certain to come. Future generations must be accorded a climate of living conditions in livable surroundings. This is their entitlement—this is their due. We would be remiss in our duty were we to do otherwise.

This Board has come to the conclusion that this area is blighted. In arriving at this conclusion this Board is consciously aware of its solemn duty to the people of the City of Newark. We have arrived at this decision with the full knowledge that the welfare of our citizens is of paramount importance. Accordingly in behalf of our people, present and future, we recommend the concurrence of the governing body with our findings.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 31 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 271

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS, *Petitioners*,

v.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK, *Respondents*.

On Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey

BRIEF FOR RESPONDENTS IN OPPOSITION

DAVID L. KROOTH
NORMAN S. ALTMAN
VICTOR A. ALTMAN
Counsel for Respondents,
1001 15th Street, N.W.
Washington 5, D. C.

NORMAN N. SCHIFF
City Hall, Newark, New Jersey

AUGUSTINE J. KELLY
57 Sussex Avenue
Newark, New Jersey
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Constitutional Provisions Involved	3
Statement	4
Argument	7
Introductory Remarks	7
A. No Substantial Federal Questions Are Raised by Petitioners	7
B. Due Process Does Not Require that a Blight Hearing Be a Trial-Type Adversary Proceeding	9
C. Blight Hearing Was Conducted in Keeping with State Statute	12
1. Trial-Type adversary proceeding is not required by Statute	12
2. The determination of blight was made in compliance with the requisite statutory criteria	13
Conclusion	16

CITATIONS

CASES:

Bauman v. *Ross*, 167 U.S. 548 (1897) 9, 10, 11
Berman v. *Parker*, 348 U.S. 26 (1954) 8, 12
Bragg v. *Weaver*, 251 U.S. 57 (1919) 9
City of Chicago v. *R. Zwick Co.*, 27 Ill.2d 128, 188 N.E. 2d 489 (1963) 7
Currin v. *Wallace*, 306 U.S. 1 (1939) 11
Danforth v. *United States*, 308 U.S. 271 (1939) 10, 11

Page

Donnelly v. *District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (C.A.D.C. 1959), cert. denied, 361 U.S. 949 (1960) 8

Fellom v. *Redevelopment Agency of City and County of San Francisco*, 157 Cal. App.2d 243, 320 P.2d 884, app. dismissed for want of a substantial federal question, 358 U.S. 56 (1958) 8

Gonzalez v. *City of Chicago*, 27 Ill.2d 128, 188 N.E.2d 489, app. dismissed, 373 U.S. 542 (1963) 7, 9

Griggs v. *Borough of Princeton*, 33 N.J. 207, 162 A.2d 862 (1960) 13

Hannah v. *Larche*, 363 U.S. 420 (1960) 11, 12

Harrison-Halsted Community Group, Inc. v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), cert. denied, 373 U.S. 914 (1963) 7, 9

Herbert v. *Louisiana*, 272 U.S. 312 (1926) 13

Kaskel v. *Impellitteri*, 306 N.Y. 73, 115 N.E.2d 659, rehearing denied, 306 N.Y. 609, 115 N.E.2d 832 (1953), cert. denied, 347 U.S. 934 (1954) 8

Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 294 (1933) 11

Redevelopment Agency of City and County of San Francisco v. *Hayes*, 122 Cal. App.2d 777, 266 P.2d 105, cert. denied, 348 U.S. 897 (1954) 8

Rindge Co. v. *Los Angeles*, 262 U.S. 700 (1923) 9

Robinette v. *Chicago Land Clearance Commission*, 115 F.Supp. 669 (N.D. Ill. 1951), motion for leave to file petition for writ of mandamus denied, 342 U.S. 940 (1952) 9

Shoemaker v. *United States*, 147 U.S. 282 (1893) .. 9

Sorbino v. *City of New Brunswick*, 43 N.J. Super. 554, 129 A.2d 473 (1957) 10

Stahl v. *Board of Finance of the City of Paterson*, 62 N.J. Super. 562, 163 A.2d 396 (1960), aff'd 69 N.J. Super. 242, 174 A.2d 238 (1961) 13

Webster v. *City of Newark*, 41 N.J. 599, 198 A.2d 445 (1964) 2

Wilson v. *Long Branch*, 27 N.J. 360, 142 A.2d 837, cert. denied, 358 U.S. 878 (1958) 9, 10, 12, 13

Page

UNITED STATES CONSTITUTION:

Amendment XIV 2

FEDERAL STATUTES:

22 U.S.C. 1257 (3) 2
78 Stat. 252-53 (11 U.S. Code Cong. & Ad. News 1603-04 (July 20, 1964)) 15

New Jersey Constitution, Article 1, Par. 5 15

REVISED STATUTES OF NEW JERSEY:

R.S. 18:25-12 15
R.S. 40:55-21.1 *et seq.* 4, 6, 13
R.S. 40:55-21.10 10
R.S. 55:14A-31 *et seq.* 4
R.S. 55:14A-32 ..... 13, 14
R.S. 55:14E-3 ..... 3, 10
R.S. 55:14E-5 ..... 3, 10
R.S. 55:14E-6 10

MISCELLANEOUS:

Executive Order No. 11063, 27 Fed. Reg. 11527 (1962) 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 271

ELLEN WEBSTER, CLARENCE WEBSTER, MABEL LYONS, ANNA FRAZIER, AARON FRAZIER, STANLEY B. WINTERS and HELEN WINTERS, *Petitioners,*

v.

CITY OF NEWARK, a Municipal Corporation, CENTRAL PLANNING BOARD OF THE CITY OF NEWARK, and HOUSING AUTHORITY OF THE CITY OF NEWARK, *Respondents.*

On Petition for Writ of Certiorari to the Supreme Court of the State of New Jersey

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The determination of the Central Planning Board of the City of Newark (Pet. App. 58B)[1] and the blight

[1] "Pet. App." references are to the Appendix to the Petition for a Writ of Certiorari; "R" references are to the Plaintiffs' Appendix in the Supreme Court of New Jersey which has been filed in this Court as a part of the record; "Pet." references are to the Petition for a Writ of Certiorari.

statement in support thereof (Pet. App. 60B) are unreported.

The resolution of the City of Newark approving the determination of the Central Planning Board (Pet. App. 57B) is unreported.

The opinion letter of the Superior Court of New Jersey, Law Division (Pet. App. 53B) is unreported.

The opinion of the Superior Court of New Jersey, Appellate Division (R. 492a) is unreported.

The Order of the Supreme Court of New Jersey dismissing Petitioners' appeal (Pet. App. 35B) is unreported. The Order of the Supreme Court of New Jersey denying Petitioners' Petition for Certification (Pet. App. 36B) is reported at 41 N.J. 599, 198 A.2d 445.

JURISDICTION

The judgment of the Superior Court of New Jersey, Appellate Division, was entered on January 10, 1964. (R. 492a). A Petition for Certification to the Supreme Court of New Jersey was denied on March 9, 1964. (Pet. App. 36B). A motion to dismiss the appeal to the Supreme Court of New Jersey was granted on April 13, 1964. (Pet. App. 35B). The jurisdiction of this Court is invoked under 22 U.S.C. 1257 (3) (*sic*) and the 14th Amendment of the United States Constitution. (Pet. 2).

QUESTIONS PRESENTED

1. Whether the 14th Amendment requires in every case that a hearing for the determination of blight be a trial-type adversary proceeding.

2. Where the Courts of New Jersey have rejected Petitioners' construction of the statutes in question, will this Court review the construction accorded the statutes by the Courts of New Jersey?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent Constitutional and statutory provisions involved (with the exception of R.S. 55:14E-3 and 5, set forth below) are set forth in Petitioners' Appendix 22A-34A.

55:14E-3. Application for approval of rehabilitation project

"Any insurance company, bank or banking institution, trust company, savings bank or association, building and loan association, or savings and loan association, or any other corporation organized, or authorized to do business, under any law of this State, acting alone or conjointly, may present to the governing body of any municipality of this State an application for approval of a project for the clearance, replanning, development or redevelopment, at the expense of the applicant, of all or part of a blighted area in such municipality. . . ."

55:14E-5. Contract between applicant and municipality: bond

". . . the governing body shall examine into such application and shall determine whether or not the project therein proposed is in the public interest and necessary for public use and welfare within the purposes of this act. The governing body may suggest changes or alterations to the proposal as submitted in the application which, if acceptable to the applicant, shall be incorporated in and become part of such application. If the governing body shall determine, by resolution, that the undertaking is in the public interest and welfare, and that the governing body is satisfied

as to the financial ability of the applicant to complete the same, then the said governing body may enter into a contract with the applicant, by which the municipality agrees (1) to acquire at its expense, by purchase, gift, devise or otherwise or by the exercise of eminent domain, all of the property included within the said tract of land, and (2) to lease the same to the applicant. . . ."

STATEMENT

The present litigation presents questions concerning the nature of a blight hearing conducted by the Central Planning Board of the City of Newark, New Jersey.

On June 7, 1961, the Municipal Council of the City of Newark (hereinafter referred to as "Council") authorized the Central Planning Board of the City of Newark (hereinafter referred to as "Planning Board") to make an investigation and hold a public hearing to determine if the area in question is a blighted area, "all as required by Chapter 187 of the Laws of 1949 of New Jersey (R.S. 40:55-21.1 et seq.) as amended, and by Chapter 211 of the Laws of 1956 of New Jersey (R.S. 55:14A-31 et seq.)" (R. 493a).

In their "Statement" Petitioners incorrectly state that the Council, by their Resolution of June 7, 1961, "designated the area be appropriated for urban renewal as a light industrial area . . . ." (Pet. 4, 5). The Resolution is entitled:

> "RESOLUTION DESIGNATING AND AUTHORIZING THE CENTRAL PLANNING BOARD TO MAKE AN INVESTIGATION AND HOLD PUBLIC HEARING TO DETERMINE WHETHER THE LIGHT INDUSTRIAL PROJECT AREA AS DESIGNATED IN THIS RESOLUTION IS A BLIGHTED AREA. (PROJECT N.J. R-32)." (R. 19a).

The Planning Board, after giving due notice, (R. 67a), held the public hearing on June 29, 1961:

> "The planning board had before it for study not only the views and exhibits presented at the aforesaid public hearing, but it also had the benefit of the city's Master Plan of 1947, which had marked this area for rehabilitation and clearance, the 'Existing Conditions Survey,' the Jacobs report, the Third and Final Report on Newark prepared by the staff of the Newark Planning Board, maps and other data. In addition, the planning board made a personal inspection of the area." (Opinion of Appellate Division, Superior Court, R. 494a).

Petitioners attended the hearing and had a full opportunity to participate. (R. 493a). They were told at the hearing by the Chairman of the Planning Board, that the Planning Board would consider any evidence presented by them up to the time it reached its determination. (R. 45a, 391a). They submitted no evidence to the Planning Board either at the hearing or later. (R. 497a).

At the hearing, they asked to examine certain records made during the investigation. This request was denied on the ground that the records (principally survey cards) contained, *inter alia*, confidential information. (R. 494a).

The Petitioners assert that they asked for an adjournment and that their request for an adjournment was denied (Pet. 5); Respondents find no entry in the record so showing.

The Planning Board determined that the area was a blighted area and sent its determination to the Council for action. The Council, on November 28, 1961, approved this determination. (R. 54a).

The Petitioners filed suit in the Superior Court, Law Division, on December 12, 1961, to set aside the Planning Board's determination of blight and the Council's approval thereof. (R. 495a). The court allowed Petitioners to examine the evidence received by the Planning Board, including all the evidence theretofore denied them. (R. 63a). Petitioners inspected the evidence and prepared their own survey and submitted it in evidence. (R. 179a). The trial judge examined all evidence submitted to him, (R. 63a) and in company of all counsel, studied the area personally and found that "the overwhelming impression is one of hopelessly irreversible deterioration and dilapidation." (R. 64a).

The trial judge (Superior Court, Law Division) upheld the actions of the Planning Board and the Council declaring the area in question a blighted area within the meaning of R.S. 40:55-21.1 *et seq.* (R. 65a).

Petitioners appealed to the Appellate Division, Superior Court, on October 25, 1962. (R. 66a). The Appellate Division affirmed, holding that the Law Division had correctly found that Petitioners had received a proper hearing; the Planning Board's determination and that of the Council were not *ultra vires;* and the determinations were not arbitrary or capricious and were supported by substantial evidence. The Appellate Division also dismissed the charge that the determinations were discriminatory against Negroes, stating that the charge was "barren of any merit herein." (R. 505a).

Thereafter, Petitioners' appeal to the Supreme Court of New Jersey was dismissed, (Pet. App. 35B) and a Petition for Certification was denied. (Pet. App. 36B).

ARGUMENT

INTRODUCTORY REMARKS

Apart from the fact that the decision below is correct, numerous reasons exist why the Petition for Writ of Certiorari should be denied.

This case presents no novel questions of great importance. Rather, in the main, only questions concerning the construction to be accorded State statutes are presented. There is no conflict among the decisions of the Courts of New Jersey on the issues in the case. And, the decisions below are in accord with the decisions which courts of other jurisdictions have made on similar questions. All have uniformly rejected the contentions here made. *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir.), cert. denied, 373 U.S. 914; *Gonzalez* v. *City of Chicago*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542; *City of Chicago* v. *R. Zwick Co.*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542.

A. No Substantial Federal Questions Are Raised by Petitioners

Each of Petitioners' three questions depends on a point of State law which is contrary to their contentions. Consequently, the Federal questions which Petitioners seek to raise are unsubstantial.

In their first question, Petitioners argue that there is an unconstitutional taking because the blight declaration requires the municipality to "acquire" the blighted property. (Pet. 3, Q. 1). The Superior Court, in accord with overwhelming authority, correctly held that the declaration of blight need not be followed by a taking of property. (R. 504a). Since

there has been no taking, nor is one required, any question of an unconstitutional taking is never reached.

The second question states that a blight proceeding is a step to the acquisition of federal funds; hence, since federal funds are involved, a federal question is raised if the blight proceeding is faulty. (Pet. 3, Q. 2). Assuming, *arguendo*, that such involvement could raise a federal question, the flaw here is that there is no contractual obligation of the Federal Government to provide any funds, even though a blight hearing has been held. As the Superior Court said, the blight proceeding is not a determination of future use. (R. 504a).

The last question argues that there is discrimination against Negroes under the redevelopment plan. (Pet. 3, Q. 3). The basic fact is that no plan for the taking of property in the blighted area has yet been approved, and the New Jersey Courts correctly ruled that it is entirely premature to look into the question of possible future discrimination in a future plan. (R. 505a).

In essence, Petitioners are questioning the constitutionality of the redevelopment statutes. It is well settled that no substantial Federal question exists as to the constitutionality of such statutes. *Berman* v. *Parker*, 348 U.S. 26; *Donnelly* v. *District of Columbia Redevelopment Land Agency*, 269 F.2d 546 (C.A. D.C.), cert. denied, 361 U.S. 949; *Fellom* v. *Redevelopment Agency of City and County of San Francisco*, 157 Cal. App. 2d 243, 320 P.2d 884, appeal dismissed for want of a substantial federal question, 358 U.S. 56; *Redevelopment Agency of City and County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 777, 266 P.2d 105, cert. denied, 348 U.S. 897; *Kaskel* v. *Impellitteri*,

306 N.Y. 73, 115 N.E. 2d 659, rehearing denied, 306 N.Y. 609, 115 N.E. 2d 832, cert. denied, 347 U.S. 934.

The claim of Petitioners that a blight hearing must be a trial-type adversary proceeding, is unsubstantial and has on other occasions been before the Court on petition for review. *Robinette* v. *Chicago Land Clearance Commission*, 115 F. Supp. 669 (N.D. Ill.), motion for leave to file petition for writ of mandamus denied, 342 U.S. 940; *Wilson* v. *Long Branch*, 27 N.J. 360, 142 A.2d 837, cert. denied, 358 U.S. 873; *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir.), cert. denied, 373 U.S. 914; *Gonzalez* v. *City of Chicago*, 27 Ill. 2d 128, 188 N.E. 2d 489, appeal dismissed, 373 U.S. 542. See also *Rindge Co.* v. *Los Angeles*, 262 U.S. 700; *Bragg* v. *Weaver*, 251 U.S. 57.

B. Due Process Does Not Require That a Hearing for the Determination of Blight be a Trial-Type Adversary Proceeding

Many cases decided by this Court demonstrate that the blight hearing here in question is merely an investigative function having no effect on property rights or other legal rights. Accordingly, the trial-type adversary hearing is not required.

A clear-cut distinction exists between the action of a Sovereign in deciding which lands may be taken and the actual taking of those lands. *Shoemaker* v. *United States*, 147 U.S. 282, 321. Merely deciding which lands might be taken affects no property rights. *Bauman* v. *Ross*, 167 U.S. 548 (the filing of a map formulating a general plan for the extension of highways in the District of Columbia was not a taking). This is true because the filing "does not restrict in any way the use

or improvement of lands by their owners before the commencement of proceedings for condemnation . . . nor does it limit the damages to be awarded in such proceedings." *Bauman* v. *Ross*, 167 U.S. at 597. Moreover, the Sovereign is not obligated by the blight hearing to take the land and "may discontinue or abandon his effort." *Danforth* v. *United States*, 308 U.S. 271, 284.

In the instant case, the applicable statute specifically provides that "the municipality may, but shall not be required to, acquire the real property within the area . . . ." declared blighted. R.S. 40:55-21.10. See also *Wilson* v. *Long Branch, supra*, and *Sorbino* v. *City of New Brunswick*, 43 N.J. Super. 554, 129 A.2d 473 (rejecting the claim that a municipality must acquire property declared blighted).

Plaintiffs incorrectly assert (Pet. 17) that the "Blight Act of Title 55" requires a taking of property by a municipality under certain conditions, thus indicating their contention that the declaration of blight must be followed by a taking of the property. Title 55 does not support their contention. By Title 55, Sections 14E-3, 14E-5 and 14E-6, a municipality is authorized to contract with a private person to redevelop blighted property, and to implement that contract the municipality may obligate itself to condemn such property.

The instant case showed no contractual connection between the declaration of blight and any subsequent action to be taken by the municipality. The City of Newark had no contract with any private persons. Instead, it was attempting to fulfill the requirements for

obtaining Federal aid in the redevelopment, under the provisions of Title 55.[2]

The declaration of blight is distinctly separated from any taking of property in the blighted area. Petitioners may speculate that the declaration may result in a loss of property values, but a taking can not be predicated on such speculation. In fact, land prices in blighted areas may rise in anticipation of redevelopment.

The Court has held that there is no taking even though "A reduction or increase in the value may occur by reason of legislation for or the beginning or completion of a project" and that "Such changes in value are incidents of ownership. . . [and] cannot be considered as a taking in the constitutional sense." *Danforth* v. *United States*, 308 U.S. at 285. See also *Currin* v. *Wallace*, 306 U.S. 1 (holding, *inter alia*, that a prospective loss of business was too speculative to amount to the denial of a property right).

What we have here is simply a fact-finding investigation being conducted by a municipality. In such cases the traditional form of adversary trial-type hearing is not required. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294; *Hannah* v. *Larche*, 363 U.S. 420 (where the Court held that when Governmental action consists merely of a general fact-finding

[2] Assuming, *arguendo*, that condemnation must follow a declaration of blight where the municipality has entered into a contract for redevelopment, this would not transform the blight hearing into a taking. The determination of lands to be taken, and the actual taking thereof, remain separate. *Bauman* v. *Ross*, 167 U.S. 548 (where the statute in question required the acquisition of certain lands included in the maps recorded, but this did not convert the recording into a taking).

investigation, no legal rights are impinged and said, at 442, that "it is not necessary that the full panoply of Judicial procedures be used.").

Sound reasons exist for not trammeling a municipality while engaged in an investigative function. For, as the Court has pointed out, Governmental bodies should not be hampered in their fact-finding investigations lest "the investigative process . . . be completely disrupted . . . ." *Hannah* v. *Larche*, 363 U.S. at 443.

No property rights or other legal rights being affected by a blight hearing or the ensuing declaration of blight, Petitioners' demand for a trial-type adversary proceeding must be rejected.[3]

C. Blight Hearing Was Conducted in Keeping With State Statute

1. Trial-type Adversary Proceeding Is Not Required by Statute.

All hearings to determine whether or not an area is blighted must be conducted pursuant to the terms of the New Jersey "Blight Areas" Act, Title 40. The Housing Authorities Law, which is a part of Title 55, makes no provision for any blight hearings independent of those contained in Title 40.

Title 55 provides that the blight hearing "shall be held in accordance with the provisions of Chapter One

[3] This Court's ruling in *Berman* v. *Parker*, 348 U.S. 26, also seems to dispose of Petitioners' claims. In upholding the District of Columbia Redevelopment Law, which provided only for a general legislative type hearing, the Court emphasized the primary legislative responsibility in the area, the broad discretion of the administrative authorities and the very limited scope of judicial review. The legislation before the Court in *Berman* is quite similar in scope to the New Jersey legislation in question. *Wilson* v. *Long Branch*, 142 A. 2d at 843.

Hundred Eighty-Seven of the laws of One Thousand Nine Hundred and Forty-Nine." The reference is to Title 40.[4]

The courts of New Jersey have unequivocally ruled that a blight hearing pursuant to Title 40, is not a trial-type adversary proceeding. *Wilson* v. *Long Branch,* 27 N.J. at 380, 142 A.2d at 851; *Griggs* v. *Borough of Princeton,* 33 N.J. 207, 162 A.2d 862. See also *Stahl* v. *Paterson Board of Finance,* 62 N.J. Super. 562, 163 A.2d 396, *aff'd,* 69 N.J. Super. 242, 174 A.2d 238.

Even assuming, *arguendo,* that the blight hearing is under Title 55, the Appellate Division, Superior Court, has ruled that Title 55 similarly gives no right to a trial-type adversary proceeding. (R. 496a).

It is well settled that the meaning accorded a State statute by the courts of that jurisdiction is conclusive. *Herbert* v. *Louisiana,* 272 U.S. 312, 316. Accordingly, no Federal question is here presented.

2. The Determination of Blight was made in Compliance with the Requisite Statutory Criteria.

The definition of blight under R.S. 40:55-21.1 sets up the criteria for finding whether blight is present. Exactly the same criteria are set forth in R.S. 55:14A-32 and the Appellate Division so held:

> "In substance, therefore, exactly the same conditions which must be found under the one must be found under the other statute before the board

[4] Petitioners have incorrectly referred to "the Blight Act of Title 55" (Pet. 11 and 17), and the "Title 55 blight proceeding" (Pet. 20). There is no Blight Act of Title 55 nor is there any such "blight proceeding" thereunder.

> can legally make a finding that the area is blighted. The recital in N.J.S.A. 55:14A-32 that the area must be found to be 'a social or economic liability' to the municipality is nothing more than a general conclusion flowing automatically from the finding of the existence of the statutorily required conditions evidentiary thereof. The 'blight statement' accompanying the board's resolution makes it abundantly clear that the conditions found to exist made the area a social and economic liability to the city." (R. 500a-01a).

This is solely a question of construction of a State statute and the decision is conclusive. Hence, there is no merit to the argument that the wrong statutory criteria were applied. Further, the New Jersey courts have clearly held that these correct criteria were properly applied in the instant case.[5]

Petitioners groundlessly allege that the blight hearing was held so as to avoid the anti-discrimination provisions of Title 55 (Pet. App. 29A), and that "Negro clearance" was being attempted. (Pet. 21). The simple answer is that the hearing notice itself showed that the blight hearing was held under both Title 55 and Title 40—automatically incorporating the anti-discrimination provision of Title 55. (R. 67a). Additionally, there are other anti-discrimination provisions of the State of New Jersey which apply to pre-

---

[5] Petitioners make an unsubstantial claim that final approval by the Council of the Planning Board's determination of blight, was not given within thirty days. Suffice it to say that both the Superior Court, Law Division (R. 121a) and the Appellate Division (R. 503a) held that the statutory period was directive and not mandatory and the Supreme Court of New Jersey in effect approved such conclusions by (1) denying certification and (2) dismissing Petitioners' appeal.

vent any such alleged abuses, regardless of whether the proceeding is under Title 40 or 55.[6] Further, the Appellate Division reviewed Petitioners' allegations and stated that they were "barren of any merit herein." (R. 505a).

We respectfully ask the Court to consider that the municipality is striving earnestly and fairly to remedy a festering condition long prevalent. The technical objections of the Petititoners are, as the Appellate Division wrote, far outweighed by the "plethora of evidence" (R. 498a) supporting the finding of blight and the "hopelessly irreversible deterioration and dilapidation" of the blighted area. (R. 503a).

---

[6] New Jersey Constitution, Art. 1, Par. 5; R.S. 18:25-12. There is no merit in Petitioners' contention that Respondent chose a course of action designed to circumvent anti-discrimination provisions. Because Federal funds are here involved, discrimination against Negroes, or anyone else in this redevelopment, is also barred by the President's Executive Order on Equal Opportunity in Housing, Exe Order No. 11063, 27 Fed. Reg. 11527 (1962), and by the Civil Rights Act of 1964, Title VI, Sections 601-05, 78 Stat. 252-53 (11 U.S. Code Cong. & Ad. News 1603-04 (July 20, 1964)).

Additionally, the allegation is premature, since no urban renewal plan is presently before the Court. (R. 505a).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVID L. KROOTH
NORMAN S. ALTMAN
VICTOR A. ALTMAN
Counsel for Respondents,
1001 15th Street, N.W.
Washington 5, D. C.

NORMAN N. SCHIFF
City Hall, Newark, New Jersey

AUGUSTINE J. KELLY
57 Sussex Avenue
Newark, New Jersey

Of Counsel

August, 1964.